

MONTANA LEGISLATIVE HISTORY

BEST COPY
AVAILABLEChapter 458 19 95Bill H 186 S _____ Original bill & history ☒ CH. Committee on JudiciaryHearing Date(s) Feb 09 ☒ CFeb 16 ☒ C_____ ☐ C_____ ☐ CDate Out Feb 16 ☒ CS. Committee on JudiciaryHearing Date(s) Mar 15 ☒ CMar 22 ☒ C_____ ☐ C_____ ☐ CMar 22 ☒ CDid this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

	TRANSMITTED TO SENATE		
1/31	FIRST READING		
1/31	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
3/01	HEARING		
3/10	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/15	2ND READING CONCURRED	50	0
3/16	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE WITH AMENDMENTS		
3/31	2ND READING AMENDMENTS CONCURRED	95	2
4/03	3RD READING AMENDMENTS CONCURRED	93	6
4/05	SIGNED BY SPEAKER		
4/06	SIGNED BY PRESIDENT		
4/07	TRANSMITTED TO GOVERNOR		
4/12	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 362		
	EFFECTIVE DATE: 10/01/95		

HB 185 INTRODUCED BY BERGSAGEL, ET AL.
REVISE LAW REQUIRING A FIXED ALLOTMENT OF COUNTY LAND
PLANNING FUNDS
BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE

1/13	INTRODUCED		
1/13	FIRST READING		
1/13	REFERRED TO LOCAL GOVERNMENT		
1/17	HEARING		
1/28	COMMITTEE REPORT—BILL PASSED		
1/30	2ND READING PASSED	96	0
1/31	3RD READING PASSED	98	0
	TRANSMITTED TO SENATE		
2/01	FIRST READING		
2/01	REFERRED TO LOCAL GOVERNMENT		
3/07	HEARING		
3/09	COMMITTEE REPORT—BILL CONCURRED		
3/14	2ND READING CONCURRED	50	0
3/15	3RD READING CONCURRED	48	1
	RETURNED TO HOUSE		
3/16	SIGNED BY SPEAKER		
3/18	SIGNED BY PRESIDENT		
3/20	TRANSMITTED TO GOVERNOR		
3/23	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 199		
	EFFECTIVE DATE: 10/01/95		

HB 186 INTRODUCED BY KASTEN
GENERALLY REVISE LAWS RELATED TO CHILD PROTECTIVE SERVICES
BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

1/13	INTRODUCED		
1/13	FIRST READING		
1/13	REFERRED TO JUDICIARY		
2/09	HEARING		
2/17	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	2ND READING PASSED	92	4
2/20	3RD READING PASSED	97	1
	TRANSMITTED TO SENATE		
2/21	FIRST READING		
2/21	REFERRED TO JUDICIARY		
3/15	HEARING		

3/23	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/28	2ND READING CONCURRED	49	0
3/29	3RD READING CONCURRED	45	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/03	2ND READING AMENDMENTS CONCURRED	98	1
4/04	3RD READING AMENDMENTS CONCURRED	97	2
4/06	SIGNED BY SPEAKER		
4/07	SIGNED BY PRESIDENT		
4/10	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 458		
	EFFECTIVE DATE: 04/14/95		

HB 187 INTRODUCED BY MENAHAN, ET AL.

PLACE THE FORENSIC FACILITY AT WARM SPRINGS, MONTANA, UNDER THE ADULT CORRECTIONS COMPONENT OF DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

1/13	INTRODUCED		
1/13	FIRST READING		
1/13	REFERRED TO HUMAN SERVICES & AGING		
1/14	FISCAL NOTE REQUESTED		
1/18	FISCAL NOTE RECEIVED		
1/19	FISCAL NOTE PRINTED		
1/20	HEARING		
1/23	TABLED IN COMMITTEE		
2/23	MISSED TRANSMITTAL DEADLINE		
	DIED IN COMMITTEE		

HB 188 INTRODUCED BY WISEMAN, ET AL.

REQUIRE PUBLIC HEARING BEFORE LOCAL OPTION TAX ON LIGHT VEHICLES MAY BE CHANGED

BY REQUEST OF THE JUDICIAL UNIFICATION AND FINANCE COMMISSION

1/13	INTRODUCED		
1/13	FIRST READING		
1/13	REFERRED TO TAXATION		
1/14	FISCAL NOTE REQUESTED		
1/19	FISCAL NOTE RECEIVED		
1/19	FISCAL NOTE PRINTED		
1/20	HEARING		
2/10	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/11	2ND READING PASSED	84	16
2/13	3RD READING PASSED	84	14
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO TAXATION		
3/06	HEARING		
3/09	COMMITTEE REPORT—BILL CONCURRED		
3/11	2ND READING CONCURRED	27	7
3/13	3RD READING CONCURRED	39	10
	RETURNED TO HOUSE		
3/15	SIGNED BY SPEAKER		
3/18	SIGNED BY PRESIDENT		
3/20	TRANSMITTED TO GOVERNOR		
3/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 217		
	EFFECTIVE DATE: 03/24/95		

House BILL NO. 186

INTRODUCED BY

Donnie Marking

BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATED TO CHILD PROTECTIVE SERVICES; DELETING REFERENCES TO "DEPENDENT YOUTH"; ADDING A CHILD'S GUARDIAN OR ADVOCATE AS MANDATORY REPORTERS OF SUSPECTED CHILD ABUSE OR NEGLECT; ADDING PERSONS TO WHOM CONFIDENTIAL RECORDS MAY BE DISCLOSED; PROVIDING FOR LIMITED IMMUNITY FOR A PERSON WHO PROVIDES OR USES EMPLOYMENT-RELATED CHILD ABUSE INFORMATION; CLARIFYING THAT A CHILD'S HEARSAY STATEMENTS MAY BE USED AT A CONTESTED HEARING; CLARIFYING PROVISIONS REGARDING POTENTIAL COURT-ORDERED PLACEMENTS; REVISING LIMITED EMANCIPATION OPTIONS FOR YOUTH; LIMITING ACCESS OF RECORDS TO PARENTS WHOSE PARENTAL RIGHTS HAVE BEEN TERMINATED; CLARIFYING THAT CERTAIN FACILITIES MAY BE REGISTERED INSTEAD OF LICENSED; AMENDING SECTIONS 20-5-321, 20-7-422, 40-6-125, 40-6-126, 40-8-111, 41-3-102, 41-3-103, 41-3-201, 41-3-203, 41-3-205, 41-3-401, 41-3-402, 41-3-403, 41-3-404, 41-3-406, 41-3-408, 41-3-602, 41-3-603, 41-3-607, 41-3-609, 41-3-611, 52-1-103, 52-2-101, 52-2-112, 52-2-113, AND 52-2-211, MCA; REPEALING SECTION 41-3-1112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 20-5-321, MCA, is amended to read:

"20-5-321. Attendance with mandatory approval -- tuition and transportation. (1) An out-of-district attendance agreement that allows a child to enroll in and attend a school in a Montana school district that is outside of the child's district of residence or in a public school district of a state or province that is adjacent to the county of the child's residence is mandatory whenever:

(a) the child resides closer to the school that the child wishes to attend and more than 3 miles from the school the child would attend in the resident district and:

(i) the resident district does not provide transportation; or

(ii) the district of residence provides transportation and is not within the same county as the child's

1 school district of choice;

2 (b) the child resides in a location where, due to road or geographic conditions, it is impractical to
3 attend the school nearest the child's residence;

4 (c) the child is a member of a family that is required to send another child outside of the elementary
5 district to attend high school and the child of elementary age may more conveniently attend an elementary
6 school where the high school is located, provided that the child resides more than 3 miles from an
7 elementary school in the resident district or that the parent is required to move to the elementary district
8 where the high school is located to enroll another child in high school;

9 (d) the child has been adjudicated by a court of competent jurisdiction to be an abused, or
10 neglected, ~~or dependent~~ child, as defined in 41-3-102, or a youth in need of supervision or a delinquent
11 youth, as defined in 41-5-103, and has been placed in a licensed youth care facility that is approved by the
12 department of family services and, as a result of the placement, is required to attend school outside of the
13 child's district of residence; or

14 (e) the child is required to attend school outside of the district of residence as the result of a
15 placement by a state agency or parent in a group home licensed by the state or an order of a court of
16 competent jurisdiction.

17 (2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have
18 a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall
19 complete an out-of-district attendance agreement in consultation with an appropriate official of the district
20 the child will attend.

21 (b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for
22 tuition and transportation as provided in 20-5-323 and Title 20, chapter 10.

23 (c) The trustees of the district of choice may waive any or all of the tuition rate, but any waiver
24 must be applied equally to all students.

25 (3) Except as provided in subsection (4), the trustees of the resident district and the trustees of
26 the district of choice shall approve the out-of-district attendance agreement and notify the county
27 superintendent of schools of the county of the child's residence of the approval of the agreement within
28 10 days. The county superintendent shall approve the agreement for payment under 20-5-324(5).

29 (4) Unless the child is a child with disabilities who resides in the district, the trustees of the district
30 where the school to be attended is located may disapprove an out-of-district attendance agreement

whenever they find that, due to insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child."

Section 2. Section 20-7-422, MCA, is amended to read:

"20-7-422. Out-of-state placement of children with disabilities -- payment of costs. (1) In accordance with a placement made by persons determining an individualized education program for a child with disabilities, the trustees of a district may arrange for the attendance of the child in a special education program offered outside of the state of Montana.

(2) Except as provided in subsection (3), when the persons determining the individualized education program of a child with disabilities who is in need of special education recommend placement in an out-of-state private residential facility, the trustees of the district of residence shall negotiate the amount and manner of payment of all costs associated with the placement.

(3) Whenever a child with disabilities who is in need of special education and related services is adjudicated by a court of competent jurisdiction to be an abused, or neglected, ~~or dependent~~ child as defined in 41-3-102 or a youth in need of supervision or delinquent youth as defined in 41-5-103 and is placed by a state agency in an out-of-state private residential facility, the superintendent of public instruction shall negotiate with:

(a) the provider for the amount and manner of payment of education fees consistent with the individualized education program determined for the child under the provisions of 20-7-402; and

(b) the state agency that makes the placement for the portion of the placement costs that represents the child's education program.

(4) Payments for a child with disabilities as negotiated in subsection (3) must be paid by the superintendent of public instruction from the state special education appropriation."

Section 3. Section 40-6-125, MCA, is amended to read:

"40-6-125. Children born out of wedlock -- relinquishment -- consent. (1) If the mother of a child born out of wedlock proposes to relinquish the child for adoption and the relinquishment or consent of the birth father cannot be obtained, the child may not be placed for adoption until the parental rights of the father are terminated by the court as provided in this part, by the court pursuant to Title 41, chapter 3, or by a court of competent jurisdiction in another state or country.

(2) Pending the termination or other disposition of the rights of the father of the child born out of wedlock, the mother may execute a relinquishment, in accordance with 40-6-135(2) through (5), terminating ~~her~~ the mother's rights to the child. If the mother relinquishes the child, the agency of the state of Montana, a licensed adoption agency, or the person to whom the child is relinquished may file a petition under this part or a petition of ~~dependency or~~ neglect pursuant to Title 41, chapter 3. Pending disposition of the petition, the court may enter an order authorizing temporary care of the child.

(3) At the request of the mother, ~~her~~ the mother's execution of a relinquishment must be delayed until after the court has determined the identity of the father and has awarded custody of the child to the father or terminated ~~his~~ the father's rights under this part."

Section 4. Section 40-6-126, MCA, is amended to read:

"40-6-126. Notice of intent to claim paternity. (1) Before the birth of a child born out of wedlock, a person claiming under oath to be the father of the child may file a verified notice of intent to claim paternity with the district court in any county of this state. The form of the notice ~~shall~~ must be prescribed by the director of the department of health and environmental sciences and supplied to the clerks of the district courts. The notice ~~shall~~ must include the claimant's address. On the next business day after receipt of the notice, the court shall transmit the notice to the records and statistics bureau of the department of health and environmental sciences. If the mother's address is stated on the notice, the records and statistics bureau shall send a copy of the notice by first-class mail to the mother of the child at the stated address.

(2) A person filing a notice of intent to claim paternity or acknowledging paternity in accordance with 40-6-105 ~~shall be~~ is presumed to be the father of the child for purposes of this part unless the mother denies that the claimant is the father. ~~Such~~ The notice is admissible in a paternity proceeding under 40-6-107 and creates a rebuttable presumption as to the paternity of that child for purposes of that section. ~~Such~~ The notice creates a rebuttable presumption as to paternity of the child for purposes of a ~~dependency or~~ neglect proceeding under Title 41, chapter 3.

(3) A person who makes a timely filing of notice of intent to claim paternity or who formally acknowledges paternity under 40-6-105 is entitled to notice of any hearing to determine the identity of the father of the child and any hearing to determine or terminate ~~his~~ the person's paternal rights to the child."

1 **Section 5.** Section 40-8-111, MCA, is amended to read:

2 **"40-8-111. Consent required for adoption.** (1) An adoption of a child may be decreed when there
3 have been filed written consents to adoption executed by:

4 (a) both parents, if living, or the surviving parent of a child, provided that consent is not required
5 from a father or mother:

6 (ii) adjudged guilty by a court of competent jurisdiction of assault on the child, as provided in
7 45-5-201; endangering the welfare of children, concerning the child, as provided in 45-5-622; or sexual
8 abuse of children, toward the child, as provided in 45-5-625;

9 (iii) who has been judicially deprived of the custody of the child on account of cruelty or neglect
10 toward the child;

11 (iv) who has, in the state of Montana or in any other state of the United States, willfully abandoned
12 the child, as defined in 41-3-102(8)(d);

13 (v) who has caused the child to be maintained by any public or private children's institution,
14 charitable agency, or any licensed adoption agency or the department of family services of the state of
15 Montana for a period of 1 year without contributing to the support of the child during ~~said~~ that period, if
16 able;

17 (vi) if it is proven to the satisfaction of the court that the father or mother, if able, has not
18 contributed to the support of the child during a period of 1 year before the filing of a petition for adoption;
19 or

20 (vii) whose parental rights have been judicially terminated;

21 (b) the legal guardian of the child if both parents are dead or if the rights of the parents have been
22 terminated by judicial proceedings and ~~such~~ the guardian has authority by order of the court appointing ~~him~~
23 the guardian to consent to the adoption;

24 (c) the executive head of an agency if the child has been relinquished for adoption to ~~such~~ the
25 agency or if the rights of the parents have been judicially terminated or if both parents are dead and
26 custody of the child has been legally vested in ~~such~~ the agency with authority to consent to adoption of
27 the child; or

28 (d) any person having legal custody of a child by court order if the parental rights of the parents
29 have been judicially terminated, ~~but in such.~~ In that case, the court having jurisdiction of the custody of
30 the child ~~must~~ shall consent to adoption and a certified copy of its order ~~shall~~ must be attached to the

petition.

(2) The consents required by subsections (1)(a) and (1)(b) ~~shall~~ must be acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of the department of family services or of an agency or witnessed by a representative of the court."

Section 6. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, or foster parent;

(b) a staff person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person legally responsible for the child's welfare in a residential setting.

(2) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(3) (a) "Adequate health care" means any medical care, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) Nothing in this chapter may be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent, due to religious beliefs, does not provide medical care for a child. However, nothing in this chapter may be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent or substantial risk of harm to the child.

(4) "Child" or "youth" means ~~any~~ a person under 18 years of age.

(5) (a) "Child abuse or neglect" means:

(i) harm to a child's health or welfare, as defined in subsection ~~(9)~~ (7); or

(ii) threatened harm to a child's health or welfare, as defined in subsection (15).

(b) The term includes harm or threatened harm to a child's health or welfare by the acts or omissions of a person responsible for the child's welfare.

(6) "Department" means the department of family services provided for in 2-15-2401.

(7) ~~"Dependent youth" means a youth:~~

1 ~~(a) who is abandoned;~~

2 ~~(b) who is without parents or guardian or not under the care and supervision of a suitable adult;~~

3 ~~(c) who has no proper guidance to provide for necessary physical, moral, and emotional well-being;~~

4 ~~(d) who is destitute;~~

5 ~~(e) who is dependent upon the public for support; or~~

6 ~~(f) whose parent or parents have voluntarily relinquished custody and whose legal custody has~~
7 ~~been transferred to a licensed agency.~~

8 ~~(8)~~ "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other
9 person responsible for the child's welfare:

10 (a) inflicts or allows to be inflicted upon the child physical or mental injury;

11 (b) commits or allows to be committed sexual abuse or exploitation of the child;

12 (c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to
13 supply clothing, shelter, education, or adequate health care, though financially able to do so or offered
14 financial or other reasonable means to do so;

15 (d) abandons the child by leaving the child under circumstances that make reasonable the belief
16 that the parent or other person does not intend to resume care of the child in the future or by willfully
17 surrendering physical custody for a period of 6 months and during that period does not manifest to the child
18 and the person having physical custody of the child a firm intention to resume physical custody or to make
19 permanent legal arrangements for the care of the child; or

20 (e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify
21 and locate the parents have failed.

22 ~~(9)~~(8) "Limited emancipation" means a status conferred on a ~~dependent~~ youth by a court after a
23 dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but
24 not all of the rights and responsibilities of a person who is 18 years of age or older.

25 ~~(10)~~(9) "Mental injury" means an identifiable and substantial impairment of the child's intellectual
26 or psychological functioning.

27 (10) "Parent" means a biological or adoptive parent or stepparent.

28 (11) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any
29 bodily organ or function ~~and~~. The term includes death, permanent or temporary disfigurement, and
30 impairment of a bodily organ or function sustained as a result of excessive corporal punishment.

1 (12) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,
2 indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

3 (13) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a
4 prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging
5 sexual abuse of children as described in 45-5-625.

6 (14) "Social worker" means an employee of the department whose duties generally involve the
7 provision of either child or adult protective services, or both.

8 (15) "Threatened harm to a child's health or welfare" means substantial risk of harm to the child's
9 health or welfare.

10 (16) "Withholding of medically indicated treatment" means the failure to respond to an infant's
11 life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and
12 medication) that, in the treating physician's or physicians' reasonable medical judgment, will be most likely
13 to be effective in ameliorating or correcting the conditions. However, the term does not include the failure
14 to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the
15 treating physician's or physicians' reasonable medical judgment:

16 (a) the infant is chronically and irreversibly comatose;

17 (b) the provision of treatment would:

18 (i) merely prolong dying;

19 (ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

20 (iii) otherwise be futile in terms of the survival of the infant; or

21 (c) the provision of treatment would be virtually futile in terms of the survival of the infant and the
22 treatment itself under the circumstances would be inhumane. For purposes of this subsection (16), "infant"
23 means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously
24 hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The
25 reference to less than 1 year of age may not be construed to imply that treatment should be changed or
26 discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available
27 under state laws regarding medical neglect of children over 1 year of age.

28 (17) "Youth in need of care" means a youth who is ~~dependent~~, abused, or neglected as defined in
29 this section."
30

1 **Section 7.** Section 41-3-103, MCA, is amended to read:

2 **"41-3-103. Jurisdiction and venue.** (1) In all matters arising under this chapter, the youth court
3 ~~shall have~~ has concurrent jurisdiction with the district court over:

4 (a) ~~all youths~~ a youth who ~~are~~ is within the state of Montana for any purpose;

5 (b) ~~any~~ a youth or other person subject to this chapter who under a temporary or permanent order
6 of the court has voluntarily or involuntarily ~~removed himself from~~ left the state or the jurisdiction of the
7 court; or

8 (c) ~~any~~ a person who is alleged to have abused, or neglected, ~~or caused the dependency of~~ a youth
9 who is in the state of Montana for any purpose.

10 (2) Venue ~~shall be~~ is determined pursuant to 41-5-204."

11
12 **Section 8.** Section 41-3-201, MCA, is amended to read:

13 **"41-3-201. Reports.** (1) When the professionals and officials listed in subsection (2) know or have
14 reasonable cause to suspect, as a result of information they receive in their professional or official capacity,
15 that a child is abused or neglected, they shall report the matter promptly to the department of family
16 services or its local affiliate, which then shall notify the county attorney of the county where the child
17 resides.

18 (2) Professionals and officials required to report are:

19 (a) physician, resident, intern, or member of a hospital's staff engaged in the admission,
20 examination, care, or treatment of persons;

21 (b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist,
22 or any other health or mental health professional;

23 (c) Christian Science practitioner and religious healers;

24 (d) school teachers, other school officials, and employees who work during regular school hours;

25 (e) a social worker, operator or employee of any registered or licensed day-care or substitute care
26 facility, or any other operator or employee of a child-care facility;

27 (f) foster care, residential, or institutional worker;

28 (g) a peace officer or other law enforcement official; ~~or~~

29 (h) clergy; or

30 (i) an advocate or guardian ad litem who is authorized to investigate a report of alleged abuse or

1 neglect.

2 (3) Any person may make a report under this section if ~~he~~ the person knows or has reasonable
3 cause to suspect that a child is abused or neglected.

4 (4) (a) Except as provided in subsection (4)(b) or (4)(c), a person listed in subsection (2) may not
5 refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

6 (b) A clergyperson or priest is not required to make a report under this section if:

7 (i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made
8 to the clergyperson or priest in ~~his~~ the capacity as a clergyperson or priest;

9 (ii) the statement was intended to be a part of a confidential communication between the
10 clergyperson or priest and a member of ~~his~~ the clergyperson's or priest's church or congregation; and

11 (iii) the person who made the statement or confession does not consent to the disclosure by the
12 clergyperson or priest.

13 (c) A clergyperson or priest is not required to make a report under this section if the communication
14 is required to be confidential by canon law, church doctrine, or established church practice.

15 (5) The reports referred to under this section ~~shall~~ must contain:

16 (a) the names and addresses of the child and ~~his or her~~ the child's parents or other persons
17 responsible for ~~his or her~~ the child's care;

18 (b) to the extent known, the child's age, the nature and extent of the child's injuries, including any
19 evidence of previous injuries;

20 (c) any other information that the maker of the report believes might be helpful in establishing the
21 cause of the injuries or showing the willful neglect and the identity of person or persons responsible
22 ~~therefor~~ for the injury or neglect; and

23 (d) the facts ~~which~~ that led the person reporting to believe that the child has suffered injury or
24 injuries or willful neglect, within the meaning of this chapter."

25

26 **Section 9.** Section 41-3-203, MCA, is amended to read:

27 **"41-3-203. Immunity from liability.** (1) ~~Anyone~~ A police officer, department employee, or county
28 attorney investigating or reporting any incident of child abuse or neglect under 41-3-201 or 41-3-202,
29 participating in resulting judicial proceedings, or furnishing hospital or medical records as required by
30 41-3-202 is immune from any liability, civil or criminal, that might otherwise be incurred or imposed, unless

1 the person acted in bad faith or with malicious purpose. There is a rebuttable presumption that the person
2 acted in good faith and with no malicious purpose.

3 (2) A person who provides information pursuant to 41-3-201 or a person who uses information
4 received pursuant to 41-3-205 to refuse to hire or to discharge a prospective or current employee,
5 volunteer, or other person who through employment or volunteer activities may have unsupervised contact
6 with children is immune from civil liability unless the person acted in bad faith or with malicious purpose."

7
8 **Section 10.** Section 41-3-205, MCA, is amended to read:

9 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department of
10 social and rehabilitation services, the department of family services and its local affiliate, the county welfare
11 department, the county attorney, and the court concerning actions taken under this chapter and all records
12 concerning reports of child abuse and neglect must be kept confidential except as provided by this section.
13 ~~Any~~ A person who permits or encourages the unauthorized dissemination of their contents is guilty of a
14 misdemeanor.

15 (2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it.
16 The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an
17 issue before it.

18 (3) Records may also be disclosed to the following persons or entities in this state ~~or~~ and any other
19 state or country:

20 (a) a department, agency, or organization, including a federal agency, military enclave,
21 or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child
22 abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

23 (b) a licensed youth care facility or a licensed child-placing agency that is providing services to the
24 family or child who is the subject of a report in the records;

25 (c) a ~~licensed~~ health or mental health professional who is treating the family or child who is the
26 subject of a report in the records;

27 (d) a parent or guardian of the child who is the subject of a report in the records or other person
28 responsible for the child's welfare, without disclosure of the identity of any person who reported or
29 provided information on the alleged child abuse or neglect incident contained in the records;

30 (e) a child named in the records who was allegedly abused or neglected or the child's legal guardian

1 or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed
2 by the court to represent a child in a pending case;

3 (f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

4 (g) approved foster and adoptive parents who are or will be providing care for a child;

5 (h) a person about whom a report has been made and that person's attorney, with respect to the
6 relevant records pertaining to that person only and without disclosing the identity of the reporter or any
7 other person whose safety may be endangered;

8 (i) an agency, including a probation or parole agency, that is legally responsible for the supervision
9 of an alleged perpetrator of child abuse or neglect;

10 (j) a person, agency, or organization that is engaged in a bona fide research or evaluation project
11 and that is authorized by the department to conduct the research or evaluation;

12 ~~+(k)~~ the members of an interdisciplinary child protective team authorized under 41-3-108 for the
13 purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the
14 plan;

15 ~~(g)~~ (l) the coroner or medical examiner when determining the cause of death of a child;

16 (m) a child fatality review team recognized by the department;

17 (n) a department or agency investigating an applicant for a license or registration that is required
18 to operate a youth care facility, day-care facility, or child-placing agency if the investigation is based on a
19 substantiated report and the applicant is notified of the investigation;

20 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
21 screening of current or prospective employees or volunteers who have or may have unsupervised contact
22 with children through employment or volunteer activities. Disclosure under this subsection (o) is limited
23 to information that indicates a risk to children posed by the person about whom the information is sought,
24 as determined by the department.

25 (p) the news media if disclosure is limited to confirmation of factual information regarding how the
26 case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or
27 guardian as determined by the department;

28 ~~+(q)~~ (q) an employee of the department or other state agency if disclosure of the records is necessary
29 for administration of programs designed to benefit the child;

30 ~~+(r)~~ (r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is

necessary to meet requirements of the federal Indian Child Welfare Act;

~~((s))~~ a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

~~((t))~~ a county attorney ~~or~~, peace officer, or attorney who is hired by or represents the department, if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

~~((u))~~ a foster care review committee established under 41-3-1115 or, when applicable, a local citizen review board established under Title 41, chapter 3, part 10;

~~((v))~~ a school employee participating in an interview of a child by a social worker, county attorney, or peace officer as provided in 41-3-202;

~~((w))~~ a member of a county interdisciplinary child information team formed under the provisions of 52-2-211 ~~who is not listed in subsection (3); or~~

~~((x))~~ members of a local interagency staffing group provided for in 52-2-203; or

(y) a member of a youth placement committee formed under the provisions of 41-5-525.

(4) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a).

(5) Nothing in this section is intended to affect the confidentiality of criminal court records or records of law enforcement agencies."

Section 11. Section 41-3-401, MCA, is amended to read:

"41-3-401. Abuse, and neglect, ~~and dependency~~ petitions. (1) The county attorney, attorney general, or an attorney hired by the county ~~welfare department or office of human services shall be is~~ responsible for filing all petitions alleging abuse, or neglect, ~~or dependency~~. The county attorney, ~~or the~~ attorney general, or an attorney hired by the ~~county welfare department or office of human services~~ department with the written consent of the county attorney or the attorney general, may require all state, county, and municipal agencies, including law enforcement agencies, to conduct ~~such~~ the investigations and furnish ~~such~~ reports ~~as that~~ may be necessary.

(2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition. ~~Such~~ The petitions ~~shall~~ must be given preference by the court in setting hearing dates.

1 (3) A petition alleging abuse, ~~or neglect, or dependency~~ is a civil action brought in the name of the
2 state of Montana. The rules of civil procedure ~~shall~~ apply except as ~~herein~~ modified in this part.
3 Proceedings under a petition are not a bar to criminal prosecution.

4 (4) The parents or parent, guardian, or other person or agency having legal custody of the youth
5 named in the petition, if residing in the state, ~~shall~~ must be served personally with a copy of the petition
6 and summons at least 5 days prior to the date set for hearing. If ~~such~~ the person or agency cannot be
7 served personally, the person or agency may be served by publication in the manner provided by the
8 Montana Rules of Civil Procedure for other types of proceedings.

9 (5) ~~In the event~~ If personal service cannot be made upon the parents or parent, guardian, or other
10 person or agency having legal custody, the court shall appoint an attorney to represent the unavailable
11 party ~~where~~ when in the opinion of the court the interests of justice require.

12 (6) If a parent of the child is a minor, notice ~~shall~~ must be given to the minor parent's parents or
13 guardian, and if there is no guardian the court shall appoint one.

14 (7) Any person interested in any cause under this chapter has the right to appear.

15 (8) Except where the proceeding is instituted or commenced at the request of the department of
16 family services, a citation ~~shall~~ must be issued and served upon a representative of the department prior
17 to the court hearing.

18 (9) The petition ~~shall~~ must:

19 (a) state the nature of the alleged abuse, ~~or neglect, or dependency~~;

20 (b) state the full name, age, and address of the youth and the name and address of ~~his~~ the youth's
21 parents or guardian or person having legal custody of the youth;

22 (c) state the names, addresses, and relationship to the youth of all persons who are necessary
23 parties to the action.

24 (10) The petition may ask for the following relief:

25 (a) temporary investigative authority and protective services;

26 (b) temporary legal custody;

27 (c) termination of the parent-child legal relationship and permanent legal custody with the right to
28 consent to adoption;

29 (d) any combination of the ~~above~~ provisions of subsections (10)(a) through (10)(c) or such any other
30 relief ~~as that~~ may be required for the best interest of the youth.

1 (11) The petition may be modified for different relief at any time within the discretion of the court.

2 (12) The court may at any time on its own motion or the motion of any party appoint counsel for
3 any indigent party."

4
5 **Section 12.** Section 41-3-402, MCA, is amended to read:

6 **"41-3-402. Petition for temporary investigative authority and protective services.** (1) In cases
7 ~~where a case in which~~ it appears that a youth is abused or neglected or is in danger of being abused or
8 neglected, the county attorney, the attorney general, or an attorney hired by the county ~~welfare department~~
9 ~~or office of human services~~ may file a petition for temporary investigative authority and protective services.

10 (2) A petition for temporary investigative authority and protective services ~~shall~~ must state the
11 specific authority requested and the facts establishing probable cause that a youth is abused or neglected
12 or is in danger of being abused or neglected.

13 (3) The petition for temporary investigative authority and protective services ~~shall~~ must be
14 supported by an affidavit signed by the county attorney, the attorney general, or an attorney hired by the
15 county ~~welfare department or office of human services~~ or must be supported by a department of family
16 ~~services~~ report stating in detail the facts upon which the request is based."

17
18 **Section 13.** Section 41-3-403, MCA, is amended to read:

19 **"41-3-403. Order for immediate protection of youth.** (1) (a) Upon the filing of a petition for
20 temporary investigative authority and protective services, the court may issue an order granting relief that
21 may be required for the immediate protection of the youth.

22 (b) The order, along with the petition and supporting documents, must be served by a peace officer
23 or a representative of the department on the person or persons named in the order. When the youth is
24 placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian,
25 or other person having legal custody of the youth, at the time the placement is made or as soon after
26 placement as possible.

27 (c) The order must require the person served to comply immediately with the terms of the order
28 or to appear before the court issuing the order on the date specified and show cause why the person has
29 not complied with the order. The show cause hearing must be conducted within 20 days of the issuance
30 of the order by the judge or a master appointed by the judge. The person filing the petition has the burden

1 of presenting evidence establishing probable cause for the issuance of the order. Except as otherwise
2 provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the
3 affected youth is admissible at the hearing or at a contested case proceeding held pursuant to Title 2,
4 chapter 4, part 6, that results from adverse licensing action taken by the department.

5 (d) Upon a failure to comply or show cause, the court may hold the person in contempt or place
6 temporary legal custody of the youth with the department until further order.

7 (2) The court may grant the following kinds of relief:

8 (a) right of entry by a peace officer or department worker;

9 (b) medical and psychological evaluation of the youth or parents, guardians, or person having legal
10 custody;

11 (c) requirement that the youth, parents, guardians, or person having legal custody receive
12 counseling services;

13 (d) placement of the youth in a temporary medical facility or a facility for protection of the youth;

14 (e) requirement that the parents, guardian, or other person having custody furnish services that
15 the court may designate;

16 (f) inquiry into the financial ability of the parents, guardian, or other person having custody of the
17 youth to contribute to the costs for the care, custody, and treatment of the youth and requirement of a
18 contribution for those costs pursuant to the requirements of 41-3-406(3) through (6);

19 (g) other temporary disposition that may be required in the best interest of the youth that does not
20 require an expenditure of money by the department unless the department is notified and a court hearing
21 is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all
22 family, insurance, and other resources have been examined."
23

24 **Section 14.** Section 41-3-404, MCA, is amended to read:

25 **"41-3-404. Adjudicatory hearing -- temporary disposition.** (1) In the adjudicatory hearing on a
26 petition under 41-3-401, the court shall determine whether the youth is a youth in need of care and
27 ascertain, as far as possible, the cause.

28 (2) The court shall hear evidence regarding the residence of the youth, the whereabouts of the
29 parents, guardian, or nearest adult relative, and any other matters the court considers relevant in
30 determining the status of the youth.

1 (3) In all civil and criminal proceedings relating to abuse, or neglect, ~~or dependency~~, none of the
2 privileges related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8,
3 except the attorney-client privilege granted by 26-1-803, apply.

4 (4) (a) If the court determines that the youth is not an abused, or neglected, ~~or dependent~~ child,
5 the petition ~~shall~~ must be dismissed and any order made pursuant to 41-3-403 ~~shall~~ must be vacated.

6 (b) If the court determines that the youth is an abused, or neglected, ~~or dependent~~ child, the court
7 shall set a date for a dispositional hearing to be conducted within 30 days and order any necessary or
8 required investigations. The court may issue a temporary dispositional order pending the dispositional
9 hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-403(2)."

10
11 **Section 15.** Section 41-3-406, MCA, is amended to read:

12 **"41-3-406. Dispositional hearing -- contributions by parents or guardians for youth's care.** (1) If
13 a youth is found to be a youth in need of care under 41-3-404, the court may enter its judgment, making
14 any of the following dispositions to protect the welfare of the youth:

15 (a) permit the youth to remain with the youth's parents or guardian, subject to those conditions
16 and limitations the court may prescribe;

17 (b) grant an order of limited emancipation to a youth who is 16 years of age or older as provided
18 in 41-3-408;

19 (c) transfer legal custody to any of the following:

20 (i) the department;

21 (ii) a child-placing agency that is willing and able to assume responsibility for the education, care,
22 and maintenance of the youth and that is licensed or otherwise authorized by law to receive and provide
23 care of the youth; or

24 (iii) a relative or other individual who, after study by ~~a social service~~ the department or a licensed
25 child-placing agency designated by the court, is found by the court to be qualified to receive and care for
26 the youth;

27 (d) order any party to the action to do what is necessary to give effect to the final disposition,
28 including undertaking medical and psychological evaluations, treatment, and counseling that does not
29 require an expenditure of money by the department unless the department is notified and a court hearing
30 is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all

1 family, insurance, and other resources have been examined.

2 (e) order further care and treatment as the court considers in the best interest of the youth that
3 does not require an expenditure of money by the department unless the department is notified and a court
4 hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort
5 after all family, insurance, and other resources have been examined.

6 (2) If the youth is transferred to the custody of the department, the court shall examine the
7 financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs
8 for the care, custody, and treatment of the youth, including the costs of necessary medical, dental, and
9 other health care.

10 (3) If the court determines that the youth's parents or guardians are financially able to pay a
11 contribution as provided in subsection (2), the court shall order the youth's parents or guardians to pay an
12 amount based on the uniform child support guidelines adopted by the department of social and rehabilitation
13 services pursuant to 40-5-209.

14 (4) (a) Except as provided in subsection (4)(b), contributions ordered under this section and each
15 modification of an existing order are enforceable by immediate or delinquency income withholding, or both,
16 under Title 40, chapter 5, part 4. An order for a contribution that is inconsistent with this section is
17 nevertheless subject to withholding for the payment of the contribution without need for an amendment
18 of the support order or for any further action by the court.

19 (b) A court-ordered exception from contributions under this section must be in writing and be
20 included in the order. An exception from the immediate income withholding requirement may be granted
21 if the court finds that there is:

22 (i) good cause not to require immediate income withholding; or

23 (ii) an alternative arrangement between the department and the person who is ordered to pay
24 contributions.

25 (c) A finding of good cause not to require immediate income withholding must, at a minimum, be
26 based upon:

27 (i) a written determination and explanation by the court of the reasons why the implementation of
28 immediate income withholding is not in the best interests of the child; and

29 (ii) proof of timely payment of previously ordered support in cases involving modification of
30 contributions ordered under this section.

1 (d) An alternative arrangement must:

2 (i) provide sufficient security to ensure compliance with the arrangement;

3 (ii) be in writing and be signed by a representative of the department and the person required to
4 make contributions; and

5 (iii) if approved by the court, be entered into the record of the proceeding.

6 (5) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay,
7 the court may modify its order for the payment of contributions required under subsection (3).

8 (6) (a) If the court orders the payment of contributions under this section, the department shall
9 apply to the department of social and rehabilitation services for support enforcement services pursuant to
10 Title IV-D of the Social Security Act.

11 (b) The department of social and rehabilitation services may collect and enforce a contribution order
12 under this section by any means available under law, including the remedies provided for in Title 40,
13 chapter 5, parts 2 and 4."
14

15 **Section 16.** Section 41-3-408, MCA, is amended to read:

16 **"41-3-408. Limited emancipation.** (1) The court, ~~after the dispositional hearing provided for in~~
17 ~~41-3-406,~~ may, upon the request of a youth who is 16 years of age or older, the youth's parent, or the
18 department, enter an order granting limited emancipation to the youth.

19 (2) Limited emancipation may be granted only if the court has found:

20 (a) that limited emancipation is in the youth's best interests;

21 (b) that the youth desires limited emancipation;

22 (c) that there exists no public interest compelling denial of limited emancipation;

23 (d) that the youth has, or will reasonably obtain, money sufficient to pay for financial obligations
24 incurred as a result of limited emancipation;

25 (e) that the youth, as shown by prior conduct and preparation, understands and may be expected
26 to responsibly exercise those rights and responsibilities incurred as a result of limited emancipation;

27 (f) that the youth has graduated or will continue to diligently pursue graduation from high school,
28 unless circumstances clearly compel deferral of education; and

29 (g) that, if it is considered necessary by the court, the youth will undergo periodic counseling with
30 an appropriate advisor.

(3) An order of limited emancipation must specifically set forth the rights and responsibilities that are being conferred upon the youth. These may include but are not limited to one or more of the following:

- (a) the right to live independently of in-house supervision;
 - (b) the right to live in housing of the youth's choice;
 - (c) the right to directly receive and expend money to which the youth is entitled and to conduct his the youth's own financial affairs;
 - (d) the right to enter into contractual agreements and incur debts;
 - (e) the right to obtain access to medical treatment and records upon the youth's own authorization;
- and
- (f) the right to obtain a license to operate equipment or perform a service.

(4) An order of limited emancipation must include a provision requiring that the youth make periodic reports to the court upon terms prescribed by the court.

~~(5) If the court determines that a youth to whom limited emancipation is granted does not have sufficient funds to finance transition to limited emancipated status, the court may order the department to provide such funds, not to exceed \$500, directly to the youth. The youth shall account to the court for the disposition of such funds and shall repay all such money to the department within 1 year of the order of limited emancipation unless the court for cause orders an extension.~~

~~(6)~~ The court, on its own motion or on the motion of the county attorney or any parties to the dispositional hearing, may modify or revoke the order upon a showing that:

- (a) the youth has committed a material violation of the law;
- ~~(b) the youth is failing to diligently pursue graduation from high school;~~
- ~~(c)~~ the youth has violated a condition of the limited emancipation order; or
- ~~(d)~~(c) the best interests of the youth are no longer served by limited emancipation; or
- ~~(e) the youth has discontinued periodic counseling with approved advisors.~~

~~(7) The department shall mail a copy of this part to all high school counseling offices."~~

Section 17. Section 41-3-602, MCA, is amended to read:

"41-3-602. Purpose. This part provides procedures and criteria by which the parent-child legal relationship may be terminated by a court if the relationship is not in the best interest of the child. The termination of the parent-child legal relationship provided for in this part is to be used in those situations

1 ~~where~~ when there is a determination that a child is abused, or neglected, ~~or dependent~~, as defined in
2 41-3-102."

3
4 **Section 18.** Section 41-3-603, MCA, is amended to read:

5 **"41-3-603. Definitions.** As used in this part, unless the context otherwise requires, the following
6 definitions apply:

7 (1) "Guardian ad litem" means a person appointed to represent a child who is the subject of a
8 petition for the termination of the parent-child legal relationship.

9 (2) "Parent-child legal relationship" means the legal relationship that exists between a child and ~~his~~
10 the child's birth or adoptive parents as provided in Title 40, chapter 6, part 2, unless that relationship has
11 been terminated by competent judicial decree as provided in this part or in 40-6-135 or in 40-6-234.

12 (3) "Treatment plan" means a written agreement between the department or court and the parents
13 that includes action that must be taken to resolve the condition or conduct of the parents that resulted in
14 the need for protective services for the child. The treatment plan may involve other parties, if necessary,
15 for protective services.

16 (4) "Youth in need of care" means a youth who is ~~dependent~~, abused, or neglected as defined in
17 41-3-102."

18
19 **Section 19.** Section 41-3-607, MCA, is amended to read:

20 **"41-3-607. Petition for termination -- separate hearing -- right to counsel -- no jury trial.** (1) The
21 termination of a parent-child legal relationship ~~shall~~ may be considered only after the filing of a petition
22 pursuant to 41-3-401 alleging the factual grounds for termination pursuant to 41-3-609. ~~Termination~~ If
23 termination of a parent-child legal relationship ~~shall be considered at a dispositional hearing held pursuant~~
24 ~~to 41-3-406, following or together with an adjudicatory hearing held pursuant to 41-3-404, within 180 days~~
25 ~~after the filing of the petition is ordered, the court may transfer permanent legal custody of the child, with~~
26 the right to consent to the child's adoption, to:

27 (a) the department;

28 (b) a licensed child-placing agency; or

29 (c) another individual who has been approved by the department and has received consent for the
30 transfer of custody from the department or agency that has custody of the child.

1 (2) After ~~the county attorney, attorney general, or an attorney hired by the county welfare~~
2 ~~department or office of human services files~~ a petition for termination of a parent-child relationship is filed
3 ~~pursuant to this part~~, parents ~~shall~~ must be advised of the right to counsel, and counsel ~~shall~~ must be
4 appointed in accordance with 41-3-401(12).

5 (3) A guardian ad litem ~~shall~~ must be appointed to represent the child's best interests in any
6 hearing determining the involuntary termination of the parent-child legal relationship. The guardian ad litem
7 shall continue to represent the child until the child is returned home or placed in an appropriate permanent
8 placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor
9 parent in addition to any counsel requested by the parent.

10 (4) There is no right to a jury trial at proceedings held to consider the termination of a parent-child
11 legal relationship."
12

13 **Section 20.** Section 41-3-609, MCA, is amended to read:

14 **"41-3-609. Criteria for termination.** (1) The court may order a termination of the parent-child legal
15 relationship upon a finding that any of the following circumstances exist:

16 (a) the parents have relinquished the child pursuant to 40-6-135;

17 (b) the child has been abandoned by ~~his~~ the parents as set forth in 41-3-102(8)(d)(7)(d);

18 (c) the child is an adjudicated youth in need of care and both of the following exist:

19 (i) an appropriate treatment plan that has been approved by the court has not been complied with
20 by the parents or has not been successful; and

21 (ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a
22 reasonable time; or

23 (d) the parent has failed to successfully complete a treatment plan approved by the court within
24 the time periods allowed for the child to be in foster care under 41-3-410 unless it orders other permanent
25 legal custody under 41-3-410.

26 (2) In determining whether the conduct or condition of the parents is unlikely to change within a
27 reasonable time, the court must enter a finding that continuation of the parent-child legal relationship will
28 likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the
29 parents unfit, unable, or unwilling to give the child adequate parental care. In making ~~such~~ the
30 determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child caused by the parent;

(d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child;

(e) present judicially ordered long-term confinement of the parent;

(f) the injury or death of a sibling due to proven parental abuse or neglect; and

(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) two medical doctors submit testimony that the parent is so severely mentally ill that ~~such person~~ the parent cannot assume the role of parent;

(b) the parent is incarcerated for more than 1 year and ~~such a~~ treatment plan is not practical considering the incarceration; or

(c) the death of a sibling caused by abuse or neglect by the parent has occurred."

Section 21. Section 41-3-611, MCA, is amended to read:

"41-3-611. Effect of decree. (1) An order for the termination of the parent-child legal relationship divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in Title 40, chapter 6, part 2, and Title 41, chapter 3, part 2, except the right of the child to inherit from the parent.

(2) An order or decree entered pursuant to this part may not disentitle a child to any benefit due

1 ~~him~~ the child from any third person, including but not limited to any Indian tribe, agency, state, or the
2 United States.

3 (3) After the termination of a parent-child legal relationship, the former parent is neither entitled
4 to any notice of proceedings for the adoption of the child nor has any right to object to the adoption or to
5 participate in any other placement proceedings held pursuant to 41-3-610."

6
7 **Section 22.** Section 52-1-103, MCA, is amended to read:

8 **"52-1-103. Powers and duties of department.** The department shall:

9 (1) administer and supervise all forms of child and adult protective services;

10 (2) act as the lead agency in coordinating and planning services to children with multiagency
11 service needs;

12 (3) provide funding for and place youth alleged or adjudicated to be delinquent or in need of
13 supervision who are referred or committed to the department;

14 (4) provide the following functions, as necessary, for youth in need of care:

15 (a) intake, investigation, case management, and client supervision;

16 (b) placement in youth care facilities;

17 (c) contracting for necessary services;

18 (d) protective services day care; and

19 (e) adoption;

20 (5) administer youth correctional facilities;

21 (6) provide supervision, care, and control of youth released from a state youth correctional facility;

22 (7) register or license youth care facilities, child-placing agencies, day-care facilities, community
23 homes for developmentally disabled persons, community homes for severely disabled persons, and adult
24 foster care facilities;

25 (8) act as lead agency in implementing and coordinating child-care programs and services under
26 the Montana Child Care Act;

27 (9) administer interstate compacts for children and delinquent youth;

28 (10) (a) administer child abuse prevention services funded through child abuse grants and the
29 Montana children's trust fund provided for in Title 41, chapter 3, part 7; and

30 (b) administer elder abuse prevention services;

1 (11) (a) make a written evaluation of each plan developed by the local family services advisory
2 councils, as provided in 52-1-203, indicating those portions of each plan that will be implemented by the
3 department, those portions that will not be implemented, and the reasons for not implementing those
4 portions;

5 (b) develop a statewide youth services and resources plan that takes into consideration local needs
6 as reflected in plans developed by the local family services advisory councils;

7 (12) administer services to the aged;

8 (13) provide consultant services to:

9 (a) facilities providing care for needy, indigent, handicapped, or dependent adults; and

10 (b) youth care facilities;

11 (14) utilize at maximum efficiency the resources of state government in a coordinated effort to:

12 (a) provide for children in need of temporary protection or correctional services; and

13 (b) coordinate and apply the principles of modern institutional administration to the institutions in
14 the department;

15 (15) subject to the functions of the department of administration, lease or purchase lands for use
16 by institutions in the department and classify those lands to determine which are of such character as to
17 be most profitably used for agricultural purposes, taking into consideration:

18 (a) the needs of all institutions in the department for the food products that can be grown or
19 produced on the lands; and

20 (b) the relative value of agricultural programs in the treatment or rehabilitation of the persons
21 confined in the institutions in the department;

22 (16) utilize the staff and services of other state agencies and units of the Montana university
23 system, within their respective statutory functions, to carry out its functions under this title;

24 (17) propose programs with specific goals and objectives to the legislature to meet the projected
25 long-range needs of institutions in the department, including programs and facilities for the diagnosis,
26 treatment, care, and aftercare of persons placed in institutions in the department;

27 (18) contract, as necessary, with the county board of welfare for administration of child and adult
28 protection services for that county; and

29 (19) adopt rules necessary to carry out the purposes of 41-3-1126, 41-5-527 through 41-5-529,
30 and this chapter."

1 **Section 23.** Section 52-2-101, MCA, is amended to read:

2 **"52-2-101. Definitions.** As used in this part, the following definitions apply:

3 (1) "Child welfare services" means the establishing, extending, and strengthening of child welfare
4 services, especially in predominantly rural areas, for the protection and care of abused, ~~dependent,~~ or
5 neglected children.

6 (2) "Department" means the department of family services provided for in 2-15-2401.

7 (3) (a) "Emotionally disturbed child" means a child determined by a psychologist, psychiatrist,
8 licensed social worker, or special education child study team (established under rules adopted by the
9 superintendent of public instruction to implement Title 20, chapter 7, part 4) to have:

10 (i) an identifiable mental health problem as identified in a nationally recognized classification system
11 or as defined in 20-7-401(8); and

12 (ii) a substantial impairment, evident for a reasonable length of time, that is characterized by a
13 dysfunction in any of the following areas:

14 (A) relationships;

15 (B) behavior;

16 (C) cognition; or

17 (D) education.

18 (b) The nationally recognized classification system referred to in subsection (3)(a)(i) must be one
19 recognized by rules established by the department.

20 (4) "Public assistance" or "assistance" means any type of monetary or other assistance furnished
21 under this title to a person by a state or county agency, regardless of the original source of the assistance."
22

23 **Section 24.** Section 52-2-112, MCA, is amended to read:

24 **"52-2-112. Duty to strengthen child welfare services.** The department shall make provision for
25 establishing and strengthening child welfare services, including protective services, and for care of children
26 in registered or licensed family foster homes, child care agencies, group homes, or treatment facilities.
27 Payment provided under this section is made under the provisions of 41-3-1122 and 41-3-1115."
28

29 **Section 25.** Section 52-2-113, MCA, is amended to read:

30 **"52-2-113. Child rehabilitation -- duties of department.** The department shall:

(1) enforce all laws pertaining to children and take the initiative in all matters involving the interest of abused, ~~or dependent, and~~ neglected children;

(2) use funds allocated or appropriated to the department for the purpose of providing for the special medical or material needs of developmentally disabled or physically handicapped children who are eligible for department programs;

(3) cooperate for the purposes ~~hereof~~ of this part with all reputable child-helping and child-placing agencies; and

(4) inspect and register or license youth care facilities, child-placing agencies, and adoption agencies."

Section 26. Section 52-2-211, MCA, is amended to read:

"52-2-211. County interdisciplinary child information team. (1) The following persons and agencies operating within a county may by written agreement form a county interdisciplinary child information team:

- (a) the youth court;
- (b) the county attorney;
- (c) the department of family services;
- (d) the county superintendent of schools;
- (e) the sheriff;
- (f) the chief of any police force; and
- (g) the superintendents of public school districts.

(2) The persons and agencies signing a written agreement under subsection (1) may by majority vote allow the following persons to sign the written agreement and join the information team:

- (a) physicians, psychologists, psychiatrists, nurses, and other providers of medical and mental health care;
- (b) entities operating private elementary and secondary schools;
- (c) attorneys; and
- (d) a person or entity that has or may have a legitimate interest in one or more children that the information team will serve.

(3) The members of the information team or their designees may form one or more auxiliary teams

1 for the purpose of providing service to a single child, a group of children, or children with a particular type
2 of problem or for any other purpose. Auxiliary teams are subject to the written agreement.

3 (4) The purpose of the team and written agreement is to facilitate the exchange and sharing of
4 information that one or more team members may be able to use in serving a child in the course of their
5 professions and occupations, including but not limited to abused, neglected, ~~dependent~~, and delinquent
6 children and youth in need of supervision. Information regarding a child that a team member supplies to
7 other team members or that is disseminated to a team member under 41-3-205, 41-5-602, or 41-5-603
8 may not be disseminated beyond the team.

9 (5) The terms of the written agreement must provide for the rules under which the team will
10 operate, the method by which information will be shared, distributed, and managed, and any other matters
11 necessary to the purpose and functions of the team."
12

13 **NEW SECTION. Section 27. Repealer.** Section 41-3-1112, MCA, is repealed.
14

15 **NEW SECTION. Section 28. Effective date.** [This act] is effective on passage and approval.
16

-END-

year sentence in the county jail for the offense so it would be treated as a misdemeanor.

REP. SMITH said she would oppose treating it as a misdemeanor and stated the need to carry a strong message that it would be a felony because of the value of the animals. She cited increase of staff to replace the animal as well as the time invested in training and its upkeep.

REP. MOLNAR'S concern in the level of punishment called for in the bill was that the prison is overcrowded now and this would not be enforceable for that reason.

REP. SMITH suggested that they could delete the words, "state prison," and change it to "the Department of Corrections may sentence appropriately." She would reject the reduction in the fine.

REP. TASH supported the legislation, but said penalties on line 18 should reflect the value of the dog rather than the ability of the offender to pay.

REP. SMITH said she tended to agree.

CHAIRMAN CLARK asked how they could address the use of bloodhounds in search and rescue which might extend to their use in law enforcement.

REP. SMITH felt the amendments attempted to address that. She was open to adding language to cover those possibilities.

Closing by Sponsor:

REP. SMITH felt this bill would help address the increased demands on law enforcement agencies and to increase their effectiveness.

HEARING ON HB 186

Opening Statement by Sponsor:

REP. BETTY LOU KASTEN, HD 99, related that HB 186 would be a general revision of laws relating to child protection services. She reviewed with the committee the provisions of each section of the bill. She said if they understood the changes in HB 186, the committee would understand HB 366. The two were companion bills.

Proponents' Testimony:

Hank Hudson, Director, Department of Family Services (DFS), spoke in favor of both HB 186 and HB 366 as being bills requested by DFS. He described the purpose of the bills and the response to needs of the department as well as the people they serve. They

were attempting to strike a balance in the need to protect confidentiality of the clients.

Ann Gilke, Staff Attorney, DFS, provided the committee with written testimony and proposed amendments to HB 186. EXHIBIT 5 She intended to testify for the companion bill, HB 366, at this time as well, which she did in part. She expanded on the sponsor's explanation of the bill section by section as well as the proposed amendments.

{Tape: 2; Side: A; Approx. Counter: 44; Comments: The witness provided written information for both HB 186 and HB 366 at this time, the secretary has separated the items pertinent to each bill.}

Mary Alice Cook, Advocates for Montana's Children, strongly supported HB 186.

Laurie Koutnik, Executive Director, Christian Coalition of Montana, found this bill to especially address the issues most effectively and directly covering the concerns their organization has. They supported the amendments.

Opponents' Testimony:

Monte Beck, Bozeman Attorney, objected to a portion of the bill at page 10 which granted immunity to department employees. He said the ramification would be to allow DFS employees to be totally and completely unaccountable and not responsible for any wrongful or incompetent actions they might take in their attempt to protect children. He provided written documents from a court case and testified regarding the case to substantiate his objection. EXHIBITS 6, 7, 8, 9 and 10

{Tape: 2; Side: B}

Russell Hill, Montana Trial Lawyers Association (MTLA), focused his opposition on the immunity provision on page 10 and on the first amendment. He suspected that the committee might be confused about the significance of the amendment. He referred to 41-3-202, MCA, which he urged the committee to read and to ask themselves what the point would be for one section of law of this legislature to impose duties of thorough investigation and affirmative and aggressive duties in instances of child abuse and then in another section immunize them.

Questions From Committee Members and Responses:

REP. SOFT assumed the language on line 30 would cover evidence of maliciousness or bad faith actions on the part of the employees.

Mr. Beck said those would be hard to prove. The standard should be negligence and incompetence.

REP. SOFT asked how this could be corrected.

Mr. Beck directed the committee to page 10, line 27 and recommended that they list the people to whom immunity would be granted and to remove police officers and department employees (he thought county attorneys would already be immune) from that list. He felt doctors and teachers would be among those who would be immune.

REP. SOFT asked Ms. Gilke's response to the above recommendation and also for her to tell the committee what her rationale was in listing those people.

Ms. Gilke pointed out from her testimony that the immunity section was disclosed. They were reflecting on this list what is already in law under 41-3-202, MCA. She felt that if they took out the amendment it would include those same people since they are authorized under that section of current code to investigate. The department would be more comfortable with going back to the original statute than listing them individually.

REP. SOFT asked if Mr. Beck's testimony had merit in regard to granting immunity in such a case as he presented during testimony.

Ms. Gilke said the department is in the position of defending their actions in placing that child in the foster home where she received abuse and the department was not granted immunity. Immunity is limited to protecting people involved in the investigation. Department employees, police officers and county attorneys need to have the protection from being sued every time they investigate allegations of child abuse.

REP. SOFT asked if there was a way to re-write it to grant the immunity so that it would be more clear.

Ms. Gilke said she would not have an answer without reflecting on it and would be willing to work with the committee on it.

REP. SOFT offered a suggestion at the top of page 11 and Ms. Gilke agreed that might be the solution to refer to gross negligence.

REP. HURDLE referred to the reporting in section 10 and asked if it applied after conviction.

Ms. Gilke said they were civil laws and there may or may not be a conviction. Page 11, line 18 reflected existing law.

REP. HURDLE asked if that meant someone having been reported for suspected child abuse would have a case record. Ms. Gilke affirmed that was so.

REP. HURDLE asked if that record could be released to someone who might want to hire that person.

Ms. Gilke said the department had developed a policy that if they investigate suspected child abuse and determine that it is substantiated, a letter is sent to the perpetrator listing the ramification which may impact their ability to become a day care provider or foster parent and gives them a description of the process to challenge the record. She described how the department would handle inquiries from prospective employers.

REP. HURDLE asked if it was based on substantiation within the department. Ms. Gilke affirmed it was.

REP. HURDLE asked for clarification of the criteria for that substantiation.

Ms. Gilke said it was outlined under the legal definitions of abuse and neglect.

REP. HURDLE asked if there was any outside agency or court of law which contributes to the substantiation. She was concerned that there could be arbitrary discrimination because of a personal grudge.

Ms. Gilke said that with the internal checks and balances along with the letter, having to justify the allegations within the legal definitions and because of review within the department with the regional administrator and the department head, it could not happen.

REP. HURDLE asked again, "The substantiation does occur just within the department with no outside input."

Ms. Gilke agreed and added that there are sometime parallel court activities which would make a finding that there has been enough evidence to confirm the allegations.

REP. HURDLE asked if there are no court proceedings, were they still authorized based on department information to notify a potential employer that the person may be an offender.

Ms. Gilke answered that was true.

REP. KOTTEL asked for an understanding of the intent on page 11, lines 3 through 6. In the case of a person who is fired or has been refused employment based on an allegation, would the employer be immune from any civil liability even though the information was unsubstantiated.

Ms. Gilke said pursuant to 41-3-205, MCA, covered that and limited the immunity to mandatory reporters.

REP. KOTTEL insisted that the wording led her to believe that it is not limited to mandatory reporters.

Ms. Gilke explained the reasoning behind the wording and clarified it.

REP. HURDLE asked for detail about how the substantiation of child abuse is reached within the department if there is no court case.

Mr. Hudson described the process. He said that there would soon be a third category, "unfounded," added beyond "substantiated or unsubstantiated" which would allow the department to destroy the records. The social worker communicates with the supervisor in making the determination as well as how to proceed in each case. They have to petition the court for investigative authority or ongoing involvement when the determination is made that abuse or neglect has occurred. A hearing is held, the parties are represented and the court takes over due process. If a substantiation is made and the department and family come to an agreement, there is an opportunity for a less formal arrangement to be made. He described the additional internal processes in appeal of the determination.

REP. HURDLE asked if she understood that during the process of substantiation, they could inform the person's employer that there is a charge of child abuse prior to finishing the process.

Mr. Hudson said he understood that if there is an ongoing appeal, they would delay. Ms. Gilke concurred.

REP. KOTTEL said she had experience with a DFS employee in a classroom situation who had said that "children at all costs should be kept with the family" and that "when sexual molestation takes place and it's not too bad, we always leave the kids there because it is worse to remove the child." In cases of neglect, the person said, "if you did that, Deb, that would be neglect; but these people live like that and so the fact that the child had no clothes, there was feces all over the floor of the house and sanitation was a little less than might be expected, that is not neglect because that's how these people live and so it is better for the child to stay." She was not comfortable with differing standards for substantiation because the bill wouldn't solve any of that and immunity just would make it worse. She asked for assurance that the department is moving toward a balance that is more palatable in protection of the children and the protection of parents who are falsely accused.

Mr. Hudson suggested that the department can make sure they are asking their workers to do something that is humanly possible-- not to juggle 40 cases at once, to carry beepers with them every second day--and they could staff their department. He felt that was a decision which rested with the legislature. They could also train people adequately on in-depth issues which is a budget issue resting with the legislature. Third, they can make sure supervisors supervise adequately, which is a department issue. They need to be accountable and encourage a public dialogue about

the kind of work they do and he recommended some of the ways that could be done. He viewed DFS as an agency of community values and he felt they need to encourage debate.

REP. BOHARSKI asked if the different levels of proof were adequate.

Ms. Gilke responded with her understanding of the different levels of the burden of proof. She would not suggest any statutory changes to them.

REP. BOHARSKI understood that some action needed to occur within 48 hours.

Ms. Gilke said the reference to 48 hours was in regard to an emergency removal of a child. If there is imminent risk of harm to a child, the agency may remove the child for up to 48 hours prior to a county attorney filing a petition to have the court review the case.

REP. BOHARSKI asked if probable cause is established, could the department hold the child for 20 days.

Ms. Gilke said that was right.

REP. BOHARSKI felt it should require something beyond probable cause to be able to pull a child out of the home for that period of time. He asked to be convinced otherwise.

Ms. Gilke believed the probable cause level is adequately high at that initial stage of involvement by the agency. The court must grant the department the authority to remove the child and place the child. Should the court believe there is enough evidence to authorize the child's removal while the department completes the investigation, she felt there were adequate checks and balances at the probable cause standard.

Closing by Sponsor:

REP. KASTEN closed with the hope that they would not leave "anyone" in the statute in section 9.

HEARING ON HB 366

Opening Statement by Sponsor:

REP. BETTY LOU KASTEN, HD 99, asked the committee's indulgence to hear a proponent immediately since his time in the area was short. The committee agreed and further agreed to question him immediately after his testimony if needed.



MARC RACICOT, GOVERNOR

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STATE OF MONTANA

HANK HUDSON, DIRECTOR

PO BOX 8005
HELENA, MONTANA 59604-8005

February 9, 1995

DEPARTMENT OF FAMILY SERVICES TESTIMONY IN SUPPORT OF HB 186
PRESENTED BY ANN GILKEY

The department has drafted a bill to generally revise the statutes pertaining to child protective services. The most significant amendments to existing law include the following provisions:

- Section 6 deletes the definition of "dependent youth." This definition is overly broad and not necessary to carry out the agency mandate to protect abused and neglected children. Sections 1 through 4, 7, 14, 17, 18, 23 and 26 simply delete reference to this term and other "clean-up" language.
- Section 6 also defines "parent" to include biological, adoptive and step parents to describe the type of families with which DFS routinely deals.
- Section 8 adds advocates and guardians ad litem, including "CASA" volunteers, as mandatory reporters of suspected child abuse or neglect.
- Section 9 clarifies immunity for social workers or officials investigating reports of suspected child abuse or neglect, or reporting child abuse. New subsection (2) provides limited immunity for people providing or using information regarding risks posed by a potential employee or volunteer who will have unsupervised contact with children.
- Section 10 expands the list of persons to whom DFS records may be released. The majority of the amendments are based on recommendations from federal regulations including the release of information to the state's advocacy program, foster and adoptive families, the alleged perpetrator, a person engaged in research, a child fatality review team, and limited disclosure to the media. We have also included release of limited, relevant information to an employer regarding a prospective employee or volunteer who will have unsupervised contact with children.
- Sections 11 and 12 delete the outdated references to "county welfare department" and "office of human services."

- Section 13 allows a child's hearsay statements to be introduced at administrative hearings regarding licensing to prevent the trauma of young witnesses having to testify.
- Section 15 clarifies that DFS or a licensed child-placing agency must study the home of a prospective placement of a child.
- Section 16 revamps the authority of courts to order limited emancipation of an eligible youth.
- Section 19 clarifies that upon termination of parental rights custody of the child may be granted to the department, a licensed adoption agency or other individual who has been approved by the agency and has received agency consent for the transfer of custody.
- Section 21 clarifies that a parent whose rights have been terminated does not have the right to his or her child's departmental records.
- Section 22, 24 and 25 clarify that the agency not only licenses child care and day care facilities, but in some instances registers such facilities.

Amendments to HB 186

1. Page 9, line 30.

Following: "advocate"

Strike: "or"

Insert: ", including the state protection and advocacy program unless disclosure would violate provisions of state or federal law; or (j) a" ,

2. Page 12, line 3.

Following: "by"

Insert: "29 U.S.C. 794(e), 42 U.S.C. 10805 and"

3. Page 16

Following: line 4

Insert: "(d) A child may not be removed from his or her home based solely on an anonymous, uncorroborated allegation of child abuse or neglect."

Renumber: subsequent sections

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CLIENT DATABASE SYSTEMS: PROTECTIVE SERVICES CASE SCREEN

HB 186

ACTION 5

CLIENT SSN 100021050 NAME KUIPERS COLTER

REFERRAL DATE	REFERRAL TYPE	CASEWORKER	COUNTY	ALT CASEWORKER
031287	A	01605	16	
(CASE) NUMBER	CASE NAME	REFERRAL SOURCE	CASE STATUS	
1604891	KUIPERS	01	E	

COMPLAINT TYPE: CASE DETERMINATION (U OR S):

COMPLAINT TYPE	U	S	PERPETRATOR REL TO CLIENT A
PHYSICAL ABUSE	X	S	
EMOTIONAL ABUSE			
SEXUAL ABUSE			

PHYSICAL NEGLECT	INVEST START DATE	INVEST COMP DATE
EMOTIONAL NEGLECT	031287	031987
MEDICAL NEGLECT		

EDUCATION NEGLECT	SERVICES PROVIDED B C
MORTALITY	
EXPLOITATION	

CF SEARCH REQUESTED

COMPLAINT RESULT

NEXT CLIENT SSN

GE:

HIT PF1 FOR CLIENT SCREEN/PF2 FOR SERVICE SCREEN/PF5 FOR SEARCH SCREEN
Aa B0--SESSION1 R 3 C 78 14:25 7/03/91

COPY

PLAINTIFF'S
EXHIBIT

VOLUNTARY STATEMENT

(Not Under Arrest)

EXHIBIT

7

DATE

2/9/95

HB

186

I, Medea Stewart, am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to Officer Spahn. Without being accused or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purpose it may serve. I understand that this statement may be used in a court of law if deemed necessary by the prosecuting attorneys.

I am 58 years of age and I live at 118 St. Front, Livingston, N.M.
My home phone # is: 222-2436 My business phone # is _____.

Who was involved? a man, a little girl maybe 2 years old and a boy about 6 or 7.

When? outside & inside of Rad restaurant in Bozeman

Where? on Sunday Oct 2 about 2 o'clock p.m.

What was involved? (Details of incident) My husband & I were having lunch in the restaurant when we saw a dark, skin colored man bringing a very nicely dressed little girl by the hand up the walk beside our window. The girl started to cry and the man picked her up, stalked back to a narrow van w/ shaded windows and opened the side door throwing her in the back seat area. He then closed the door & we could see him raising his hands over his head & seemed to be hitting her again & again. We saw him then open the van door - jerked the girl from the floor & stood her near the door holding a cloth to her. He appeared to raise dress & looked at her panties took her out of the van - we observed she was ^{or into} not crying but ^(use book if needed) was

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. Dated at

Livingston this 4 day of Oct, 1988.

WITNESSED BY OFFICER

Medea Stewart
Signature of person giving the Voluntary Statement

BOZEMAN POLICE DEPARTMENT

COPY

her cheeks

swollen and appeared to have black marks on them. The girl seemed to have no expression at all & made no sound but he was able to appear to speak very silently. He then came into the restaurant where 3 ladies & two boys about 6-7 & 10 or so were sitting in the dining area. The boys got up & went up the steps near the salad bar. The man quickly & very angry caught the smaller boy by the upper arm & shook him. The boy came around the salad bar near us - he was rubbing his arm & grimacing as if in pain. The man then brought an ice cream cone & all three children sat down at a table.

A young couple was sitting at a table at the end of the restaurant directly in front of the bar. The young man came to our table & asked if we would tell what we saw as he had already taken the license numbers and had seen what was happening also.

M. Hest

The above coincides with my observations.

J. M. Steward

VOLUNTARY STATEMENT

(Not Under Arrest)

LABOR 8

DATE 2/9/95

HB 186

I, Jay M. Provenzano, am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to Officer Sanem. Without being accused or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purpose it may serve. I understand that this statement may be used in a court of law if deemed necessary by the prosecuting attorneys.

I am 24 years of age and I live at 462 Nelson Street.

My home phone # is: 587-2761 My business phone # is 586-4423.

Who was involved? Hispanic looking male in his late 30's early 40's, with black short hair + glasses with a red print shirt.

When? 2:30 p.m. on Oct. 2, 1988.

Where? Rax Restaurant outside the parking lot in vehicle.

What was involved? (Details of incident) Redish, maroon van pulled up outside of Rax. we were sitting at a table inside looking out at the parking lot. People got out of a van + started to enter restaurant except for the man with glasses + a hispanic looking little girl around 3 or 4 years old + she was crying. She wouldn't stop so he grabbed her arm + pulled her back into the van + sat her down ~~in~~ ^{on} her back. He hit her with his hand ~~on her back~~ ^{on her head} ~~on her head~~ ^{on her back} then he laid her down + at first I thought maybe he was spanking her but then I saw he wasn't using his hand but his fist.

(use back if needed)

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. Dated at _____ this 2nd day of October, 1988.

Sanem
WITNESSED BY OFFICER

Jay M. Provenzano
Signature of person giving the Voluntary Statement

And it looked like he hit her 4 or 5 times. Then he quit & he opened the door & started brushing her hair. They both got out of the van & I saw ~~base~~^{gnp} bruises on her face. She stopped crying but she looked frightened. We heard two people behind us about the incident also, so Sam went to talk to them & they saw the same thing. Then they went into the restaurant with nothing in their hands. His wife who was Caucasian also had two other Caucasian kids. The little boy said that she needed her diaper changed but the dad just grabbed the little girl & put her in the ~~car~~^{gnp} chair without changing her diaper. The wife then went back out to the van to get the checkbook. That was the time that Sam decided to talk to the other couple who saw what we did and we got their name. Then we left the restaurant.

VOLUNTARY STATEMENT

(Not Under Arrest)

DATE

2/9/95

NB

186

I, SALVATORE F PROVENZANO, am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to Officer Soren. Without being accused or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purpose it may serve. I understand that this statement may be used in a court of law if deemed necessary by the prosecuting attorneys.

I am 23 years of age and I live at 402 NELSON Street town 525.

My home phone # is: 587-2761 My business phone # is N/A.

Who was involved? Identity is not ^{SFP} KNOWN, ADULT MALE (Hispanic) 7'10" Black Hair, Black Mustache, w/ sunglasses. SMALL female child 3-4 yrs old (Hispanic)

When? 2 October 1988

Where? Rax Restaurant Parking lot

What was involved? (Details of incident) while sitting in Rax Restaurant (window seat) the previously mentioned Male dragged (by the arm), then carried the previously mentioned female child out into the parking lot and into a new 86-88 Ford acoustar (Maroon color) License No. 6-81261. The Male then hit the female 3 times in the head area. Then He laid her across the rear seat and repeatedly hit the child. These "Hits" were with a closed fist. After the Male hit the female approx. 10 times he yanked her from the ^{SFP} vehicle and brought her into the restaurant. He took her into the restroom where they remained for approx. 5 min. When they came out of the restroom they were within 2 feet of where I was sitting. The small child ^{SFP} looked very frightened beyond the point of crying. Her face was swollen or puffy and Bruises were all over (her face). They sat down with

(use back if needed)

I have read each page of this statement consisting of _____ pages(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. Dated at _____ this _____ day of _____, 1988.

S. Soren

WITNESSED BY OFFICER

[Signature]
Signature of person giving the Voluntary Statement

the rest of the family and the younger boy made comment to the fact that her diaper was dirty and that someone should change it. The ADULT MALE (father) grabbed the small female child and said "Don't worry about it. go get something to eat!" His tone was angry. While the Adult male was bringing the small female child into the bar (after the beating) the mother went out to the vehicle and looked for something. When she returned it seemed like she was carrying a checkbook. While this incident was taking place, the mother seemed oblivious to what was happening. After this happened I walked over to the table next to mine, (called a window seat) and talked with Bill & Mickey Stewart of Livingston Mt. They said they had seen exactly what I had seen, and had no qualms about giving me their Name and address. They urged me to call the police as soon as possible. I was shaking while I wrote their address because I was so angry at what had just happened. I went and called the Bismarck police Dept. and reported what I had seen to Officer SANEM. I did so approx. 30 min after the event took place.

(Note: after beating the child, the father opened the door of the van and held the child's face in his hand. He then started to pull her hair.)

REPORT OF INVESTIGATION

EXHIBIT 10
DATE 2/9/95
HB 186

SUBJECT: Report of Investigation of Domestic Abuse

REFERENCE: Complaint # 88-10-02-05 (#)

Complainant: Sam Provenzano

SUSPECT(S): Name: Arthur Dennis KUIPERS
Address: 200 E. Rosebud Belgrade, Mt
Date of Birth: 3/7/52
Social Security Number:

10-2-88 DETAILS OF COMPLAINT/INVESTIGATION:

At approximately 1445 hrs. this investigating officer, Linda Sanem, received a call on the emergency line from Sam (Salvatore) Provenzano who stated that he wanted to report a case of child abuse. Over the phone he told me that a hispanic looking man had taken a small child, approx. 3 yrs. old, into a maroon van license #6-81861 and beaten her with several strikes with a closed fist. He stated he thought they were still at Rax where the incident occurred. I responded with Officer Paul Erickson to investigate the complaint. The van was still there on our arrival. Officer Erickson asked the suspect to go with him. Officer Erickson spoke with the suspect identified as Arthur Dennis KUIPERS. I observed a child matching the description the compl. had given and asked to speak with the child's mother. A woman in a dress with blondish hair accompanied me the a back hallway carrying the child. The child was dressed in a blue sailor suit and there were several bruises on the child's face. I identified myself to the female and told her that we were investigating a complaint of possible domestic abuse. I asked her what the child's name was and how her face became bruised. She told me the child was recently adopted and had been "falling down alot". I asked the female her name. She replied, "I don't know if I should give it to you or just call my attorney". After telling her again why I was there and she had to give me her name she gave her name as "Martha". She reluctantly gave me her address and phone # but refused to give me her date of birth. She also told me the child's name was Carly and that social workers already know about the bruises. She was very uncooperative and defensive at times stating that she saw nothing in reference to Carly being hit. She told me that she went to the van to get a diaper. At times she was calm and seemed appreciative of what I was telling her about her husband and at times was upset that I was interfering. She demanded to know why I was there after I had already told her why I was there. Officer Quam and Officer Erickson heard part of my conversation with "Martha". Officer Erickson advised her that our report and witness statements would be turned over to SRS who would investigate the complaint further. We then left the restaurant.

Following that I met with Sam and Joy Provenzano at the station and obtained statements from them. So far I have been unable to obtain written statements from the other two witnesses, William and Mickey Stewart in Livingston. I spoke briefly with Mrs. Stewart on the phone and I am sending them statements to fill out. As of 1630 hrs. 10-2-88 this concludes this officer's investigative report.

Officer Linda Sanem

JUVENILE

COPY

Linda Sanem

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE 2-9-95

BILL NO. HB 186

SPONSOR(S) Rep. Martinez

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Laure Kautruk	Christian Coalition of MT	✓	
Monte Beck	self		✓
Russell B Hill	MT Trial Lawyers		✓
MARY ALICE COOK	ADV for MTS CHILDREN	✓	
Mary Cavanaugh	MAP	✓	✓
Andrée Larose	Montana Advocacy Program (MAP)	—	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FOR ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

wp:visbcom.man

CS-14

EXECUTIVE ACTION ON HB 366

Motion: REP. CAREY MOVED HB 366 DO PASS.

Discussion: Members of the committee discussed informally the problems with the bill which included the mandatory reporting requirement to the Department of Family Services (DFS) by independent advocacy groups and the access to records as well as the immunity clause.

Motion/Vote: REP. GRIMES MOVED TO TABLE HB 366. The motion carried unanimously.

EXECUTIVE ACTION ON HB 186

Motion: REP. MC GEE MOVED HB 186 DO PASS.

Discussion: The Chairman reminded the committee that the bill had been amended twice in previous action by the committee.

Motion: REP. KOTTEL MOVED TO AMEND PAGE 11, LINE 4 FOLLOWING 41-3-205, BY INSERTING "AND SUBSTANTIATED BY THE DEPARTMENT,"

Discussion: REP. HURDLE wanted to clarify what is meant by substantiation because she was concerned about the substantiation process.

REP. BOHARSKI asked what subsection (2) provided.

REP. KOTTEL said that prior to the amendment, if a person would receive information from either of the two sections, it could be used as a basis for termination from employment and the employer would be immune from any civil liability in terms of wrongful discharge unless they acted in bad faith in the termination. The amendment would attempt to put balance back with the employer's right to protect children from people who had not yet been convicted of child endangerment crimes and also protect the rights of employees from mere allegations in the file. The amendment would require that the department substantiate the information or allegation.

REP. BOHARSKI asked if it related specifically to employees who are involved in activities with children and REP. KOTTEL affirmed that.

REP. HURDLE said that DFS has a blacklist of people who are refused payment and employment, even some who are still doing child care, because a DFS employee had "substantiated that an allegation was made." She said they have cases in court now which this relates to and she thought that was why DFS had included it in the bill.

REP. MOLNAR said REP. HURDLE was right, but he asked if there was an amendment already accepted to clarify this issue and the committee directed their attention to page 11, line 1 to affirm that had been done.

REP. HURDLE said the blacklist problem still existed and that this would only save money. She said they could continue in child care, but could not collect the funds from assisted child care programs. She said it was profitable for DFS to put people's names on the list.

REP. KOTTEL restated her amendment to include language suggested to clean it up to read, "that is substantiated by the department" following on line 3, 41-3-201; and on line 4, following 41-3-205.

Motion: REP. HURDLE MOVED A SUBSTITUTE AMENDMENT TO INSERT AFTER THE WORD SUBSTANTIATED, "WITH USE OF DUE PROCESS."

{Tape: 1; Side: B}

Discussion: REP. KOTTEL agreed with the concept but not with the placement.

REP. HURDLE said the basics of due process was the confronting of the accuser before being placed on a list.

REP. BOHARSKI clarified what he believed REP. HURDLE was trying to do. He said that if someone was accused, before due process the court could still impose a restraining order. But in the long term, before being placed on the list by the department, due process needed to be ensured. REP. HURDLE said that was exactly right.

Mr. MacMaster thought that the wording would seem vague to the department. He suggested that they use the words, "substantiated by the department by independent corroboration."

REP. HURDLE accepted that language as a friendly amendment.

REP. BOHARSKI asked about using clear and convincing evidence, beyond a reasonable doubt.

REP. KOTTEL said that in an administrative proceeding, it is the lowest standard to only allow the employer to have some immunity in using the information. She would support the suggested wording.

REP. HURDLE withdrew her original motion.

Motion/Vote: REP. HURDLE MOVED A SUBSTITUTE AMENDMENT TO INSERT AFTER THE WORD SUBSTANTIATED, "BY INDEPENDENT CORROBORATION."
The motion carried unanimously by voice vote.

Motion: REP. CAREY MOVED TO AMEND BY STRIKING LINE 30 ON PAGE 9 AND LINE 1 ON PAGE 10.

Discussion: REP. KOTTEL asked why they would take out the guardian ad litem portion.

REP. CAREY was open to changing the amendment.

Motion: REP. KOTTEL MOVED A SUBSTITUTE AMENDMENT TO DELETE, "AN ADVOCATE OR" AND INSERT BEFORE GUARDIAN, "A."

Discussion: REP. MC GEE reminded the committee that this was a turf battle.

Vote: The motion carried unanimously by voice vote.

Motion: REP. MC GEE MOVED TO AMEND PAGE 11, LINES 1 AND 2 TO STRIKE "THERE IS" ON LINE 1 THROUGH END OF LINE 2.

Discussion: REP. MOLNAR opposed the amendment because there was already a higher standard used and that if a person thinks a child is being abused, they should be able to make that claim to somebody to have it investigated without fear and that the investigator should exercise common sense in the investigation.

REP. MC GEE gave a personal example of how a rebuttable presumption could be inappropriately used.

REP. CURTISS asked if, besides granting immunity to some people, this bill would really be doing anything substantial to protect the interests of children.

REP. KOTTEL said she felt that the immunity was provided under section 9 and that section 2 was important to protect children from endangerment. She thought the other substantial area had to do with page 12 dealing with confidentiality. She believed the rest of the bill was clean-up language.

REP. HURDLE said she agreed that they were not accomplishing much with the bill. She hoped that they would come to see DFS as agents of community values and that they will authorize enough funding in HB 2 to supervise and train them.

REP. CURTISS said she was going to vote against the bill because she did not see where it would make DFS any more responsible than they had been. She felt they have all the laws they need to do their jobs and there was evidence that they are not doing their jobs.

REP. KOTTEL again directed the committee to the specifics in the bill she felt would accomplish resolution to concerns with the protection of children.

Motion: The motion to adopt the McGee amendment carried 18 - 1; REP. MOLNAR voted no.

Motion: REP. KOTTEL MOVED HB 186 DO PASS AS AMENDED.

Discussion: REP. MOLNAR said that the amendments had raised the standard considerably for DFS to use when they pursue these issues. He thought they had greatly improved the bill.

Vote: The motion carried 16 - 3; REPS. CURTISS, CLARK and SMITH voted no. (REP. BERGMAN voted aye by proxy.)

EXECUTIVE ACTION ON HB 256

Motion: REP. GRIMES MOVED HB 256 DO PASS.

Motion: REP. MC GEE MOVED AMENDMENTS ON EXHIBIT 3.

Discussion: REP. LINDA MC CULLOCH had a problem with branding drivers' licenses.

REP. MC GEE submitted that more people are killed on highways than with guns; therefore, he advocated the use of whatever it would take to curb this problem. He reviewed the amendments and summarized that they strengthened the first DUI, strengthened more so the second DUI and made the third DUI a felony.

REP. GRIMES described how each DUI penalty would be strengthened by the amendments.

REP. BOHARSKI said that the third offense was still not a felony through the wording of the amendment. A felony is defined by the length of time and where the incarceration would take place.

The committee worked with the wording of the amendment until they had come to the wording necessary for the intent of making the third DUI a felony offense.

REP. MC GEE withdrew his amendment and he and members of the committee as well as Mr. MacMaster adjusted the language for a new amendment.

Motion: REP. MC GEE MOVED A SUBSTITUTE AMENDMENT TO LINE 26 ON PAGE 1, AFTER "SHALL BE" STRIKE "IMPRISONMENT" AND INSERT, "INCARCERATION IN THE COUNTY JAIL OR A STATE PRISON FOR NOT LESS THAN ONE YEAR OR MORE THAN TEN YEARS AND A FINE OF NOT LESS THAN \$1,000 NOR MORE THAN \$50,000." HE ALSO MOVED THE BALANCE OF THE AMENDMENTS OUTLINED IN EXHIBIT 3.

Discussion: REP. BOHARSKI clarified for the committee that with the language of the amendment, the third DUI could still fall out of the felony category and REP. MC GEE replied that he was comfortable with it accomplishing the purpose of keeping the



HOUSE STANDING COMMITTEE REPORT

February 16, 1995

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Mr. Speaker: We, the committee on Judiciary report that House Bill 186 (first reading copy -- white) do pass as amended.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, line 7.

Strike: "OR ADVOCATE"

Following: "AS"

Insert: "A"

Strike: "REPORTERS"

Insert: "REPORTER"

2. Page 9, line 30.

Strike: "an advocate of"

Insert: "a"

3. Page 10, lines 27 and 28.

Strike: "A police" on line 27 through "attorney" on line 28

Insert: "Anyone"

4. Page 11, line 1.

Following: the first "the person"

Insert: "was grossly negligent or"

5. Page 11, lines 1 and 2.

Strike: "There is" on line 1 through end of line 2

6. Page 11, line 3.

Following: "41-3-201"

Insert: "that is substantiated by the department by independent corroboration"

Committee Vote:

Yes 16, No 3.

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Page 2 of 2

7. Page 11, line 4.

Following: "41-3-205"

Insert: "that is substantiated by the department by independent
corroboration"

-END-

commitment. By bringing the process into the committee, they can identify resources within the community and the group would be able to do a threshold screen to place the person in the appropriate place. SENATOR HALLIGAN said their board in Missoula was concerned about procedural rights of any of the consumers without the cognitive functions if they do not have a family member or guardian to represent their best interests. Mr. Lund replied that most people were responsible for their own well-being and few are in guardianship. Most can consent for themselves. The Missoula corporation participates in the IP (individual planning) team which can work with the county attorney or the Montana Advocacy Program and look for an advocate or guardian if there is a serious question of ability to consent. The judge would make the determination too, about the commitment law. It was intended to provide balance behind the committed person. SENATOR HALLIGAN said he did not have a problem with it. He stated that they had the very severely disabled in their residential care and it has been a concern that the individual might consent to a waiver of rights. He did not think they could do that. He was unaware of the layers of protection and support to make sure that they are in the best setting possible. Mr. Lund said there was a set of rights encompassed in the law. SENATOR LARRY BAER asked Mr. Anderson about the fiscal note item of \$1.3 million in the budget for the biennium. He asked if the amendments negated that figure? Mr. Anderson said the bill initially included a proposal to close Eastmont effective January 1, 1997. The fiscal note contains all the information regarding that issue. That part of the bill had been amended out and they were no longer recommending the closure, so the fiscal impact would be zero. It would only apply with the closure of Eastmont.

Closing by Sponsor:

REPRESENTATIVE MCKEE reaffirmed that the fiscal note had been eliminated with the Eastmont amendment. There will be no fiscal impact with the bill. It would only enhance the current commitment statute for the seriously developmentally disabled and eliminates the current sunset provisions in the law. She said SENATOR HOLDEN had agreed to carry the bill onto the Senate floor if it should be approved.

SENATOR AL BISHOP ASSUMED THE CHAIR.

HEARING ON HB 186

Opening Statement by Sponsor:

REPRESENTATIVE BETTY LOU KASTEN, House District 99, Brockway, sponsored HB 186. She asked the committee to also be cognizant of HB 366 which implements the things that are presented in HB 186 in the adult protection side of the statutes. This bill would clean up and bring the statutes for child protection up to date. She directed their attention to the amendments on Pages 11 and 12 which are the substantial amendments in the bill. They

deal with to whom the confidential records may be disclosed. They also give limited liability to the providers for protection and care of children. Many providers are interested in seeing that these provisions are put into law.

Proponents' Testimony:

Ann Gilkey, Attorney, Department of Family Services, reasserted that the bill was a general clean-up bill, but also had technical amendments that they believe will help the department carry out its mandate to help children at risk of being abused and neglected. It will also help others who provide service to better assist the state in their goal of protecting children. While all of the provisions in the bill are important, of major concern to the department and other providers is the provision that authorizes the agency to share limited information with employers or volunteer organizations regarding prospective employees or volunteers who will have unsupervised contact with children. The department has information that would help to protect children from abuse. The agency needs the authority to share that information with other employers before another child is abused needlessly. Another provision would clarify that a person authorized to investigate alleged child abuse and neglect has a limited immunity from liability. Anyone providing or using the information related to employment will have this immunity and employers might seek relevant information prior to hiring staff or soliciting volunteers that pose a risk to children. The bill would also expand the present limitations regarding confidentiality and to whom the department may release information. They wished to release to people with a need to know, but it had been expanded to include the guardian *ad litem*, foster and adoptive parents, an alleged perpetrator, a bona fide researcher, and with limitations, the media and members of the Youth Placement Committee. These were in response to concerns raised by citizens of the state as well as the federal government asking them to expand the confidentiality provisions. In the House there were amendments made which might require a bit of revision. On Page 9, Section 8, Line 30, the House deleted an advocate or guardian *ad litem* in the mandatory reporting section. The advocate was deleted because of controversy with the Montana Advocacy Program. They did not want to be mandatory reporters. Their department intended that, "advocate" would include volunteers and the court-appointed special advocates. She asked the committee to consider an amendment for those advocates and not the Advocacy Program by inserting, "or court-appointed advocate who is authorized to investigate." Another amendment of concern to her was on Page 11, Section 9, Line 4 and 5. The House did not want the department to release information about a prospective employee based on an anonymous referral. That was not the intent of the language, but in an attempt to clarify that the referral made by a mandatory reporter or anyone that is corroborated or substantiated by the department is fine with them. She was concerned that it would be interpreted to mean that someone other than the department has to corroborate the

referral. Her suggested change was to leave the intent of the House amendment, but to clarify it and avoid interpretation problems. She suggested changing Line 4 by deleting "by independent corroboration," and also the same on Line 5.

Russell Hill, representing the Montana Trial Lawyers Association, said he had not intended to speak, but the sponsor had asked him to speak to Section 9 of the bill Page 10 and 11, relating their position. He said they had generally opposed this bill because of the way the Sections were drafted. The House had made some of the amendments. Their concern was that it made no sense for the legislature to impose duties on people to investigate and protect children and then immunize them from any accountability if they completely ignore it or do it incorrectly. The amendments on Subsection 1 were good. On Subsection 2, he agreed that it may be a cumbersome way to phrase the Subsection because it would be clearly raising the consequences of this information. People can fire a current employee, or refuse to hire someone on information acquired from the department. If the consequences were raised, the guarantees should also be raised. The need to substantiate the information is important and it was the House's concern that it be substantiated outside the department. On Lines 4 and 5 of Page 11, he said the language drafted now would impose on a third person, like an employer or someone who gets information from the department, to somehow know whether that information has been substantiated or independently corroborated. It would be easy for the department to know, but it would be different for the employer to fire someone or refuse to hire someone to prove that the verification is accurate.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR HALLIGAN said he was trying to understand Subsection 2 on Page 11. If a nurse saw marks on a child, calls the department and they come out and see the marks on the child. That is not an independent corroboration right now under the language of the bill. The cops come out and see the marks on the child. That is an independent corroboration of the abuse. How does that connect with the refusal to hire or discharge? What was the House doing there, he asked? Ms. Gilkey said she tended to disagree with Mr. Hill's interpretation of what the House was intending to do. Her understanding from the House discussion in House Judiciary, was the concern about an anonymous referral coming into the department and based on the unsubstantiated information, it would be released to others. The intent from the department's perspective was to share information on substantiated abuse or neglect that would indicate that the person they were about to hire was going to be a volunteer for Big Brothers or others, may pose a serious risk to children. They would not share uncorroborated information, they would have done their

investigation. They would not necessarily have to have a third party verify that the child was bruised. She said the House was trying to ensure against anonymous referrals being used to discharge employees, by putting the language, "substantiated by the department." She said the agency does have corroboration from anonymous referral, but it is internal within the department. They would never substantiate based solely on an anonymous referral. They could not. SENATOR HALLIGAN asked if normal non-profits, such as Big Brothers and Sisters, normally contact the DFS in various communities to ask if individuals have complaints against them for child abuse and other reasons? Ms. Gilkey talked about the Oprah Winfrey bill, or the child protection act. There was a lot of discussion prior to the session about whether or not they would introduce a bill to implement that act into Montana. Big Brothers and Sisters, 4-H, Boy Scouts, everyone came to the meetings to decide. They do background checks in Big Brothers and Sister as well as they can. The others really don't and were opposed to the Child Protection Act because of the possible financial implications to their volunteers. This was the department's way of addressing that concern about being able to share information without the fingerprint cards and all the rigmarole the federal act would have required. All the programs want the protection, she said. The department has in their files very relevant information to help them protect children, but currently they were unable to share it. This bill would give that opportunity. SENATOR HALLIGAN stated that he did not believe they should give that information to anyone. Did they do that in other states? Ms. Gilkey said many times people who pose great risks to children are not prosecuted or convicted, so the DFS would be the only ones to have that information. If they know people have abused or molested others sexually, but haven't been charged criminally, they hate to let them be employed or volunteer for Big Brothers and Sisters knowing full well that they pose a high risk to the children. That's why it is important to have the information substantiated. They also had rule-making authority and could specify the type of information and how it would be given out.

Closing by Sponsor:

REPRESENTATIVE KASTEN said people had worked hard for years to provide information to child protection providers. Of the perpetrators, she said, many hold low-paying jobs and the same people are circulating through the system. Maybe they are looking for a better job, but sometimes they have been asked to leave a position. The department might have fast and hard evidence that these people are moving because of child molestation, for instance. They should be able to share with the people that are working to protect these children. Of the people who opposed the bill in the House, they asked why would they just say, "anyone," and if it could be clarified. When they tried to clarify, the amendment was rejected. She did not disagree with Mr. Hill that it should not have been in there, but she asked the committee to look carefully at the amendment. She also agreed

with Ms. Gilkey in response to the language. REPRESENTATIVE KASTEN said it was a good bill, and it was a necessary bill. If the bill would pass, she asked SENATOR CHRISTIAENS to carry the bill to the Senate floor.

HEARING ON HB 366

Opening Statement by Sponsor:

BETTY LOU KASTEN, House District 99, Brockway, sponsored HB 366. She said it was originally brought in an effort to bring the advocacy people and the department people together in some of the disputes they were having. Since that wasn't possible, the House had seen fit to strip all of the amendments that deal with the advocacy group out and merely left the coordinating statutes in HB 186 to be coordinated with the adult protection that the statute in HB 366 addresses.

Proponents' Testimony:

Ann Gilkey, Attorney, Department of Family Services, said HB 366 is also a general clean-up bill related to adult protective services. It would change the reference to developmentally disabled person to a person with developmental disabilities. She said the SRS were also trying to change it to the correct definition. It would consolidate redundant laws and repeal unnecessary laws, it would coordinate it with the same amendments they were trying to get in HB 186 and make it consistent with the child protective service statutes. It does the same regarding the release of information of a potentially harmful person working around the elderly or the developmentally disabled. It was at the request of the providers that the bill was proposed. She urged support of HB 366.

Opponents' Testimony:

None.

Informational Testimony:

Russell Hill, representing the Montana Trial Lawyers Association, called the committee's attention to Page 9, Section 6, having to do with the immunity from civil and criminal liabilities. This is essentially a mirror image of the Section they saw in HB 186. In the House, they did not stand in opposition because of the practical reality. The amendments made in the House had not been made here, he said. This would not require the independent substantiation or the other provisions.

Questions From Committee Members and Responses:

SENATOR HALLIGAN said he wanted to make sure the language was as tight as possible on the language on confidentiality that was

Discussion: It was determined that SENATOR BAER and Valencia Lane would work on the amendments for presentation the following day.

EXECUTIVE ACTION ON HB 256 and HB 345

Discussion: CHAIRMAN CRIPPEN said the DUI bills needed to be coordinated to SB 316 and SB 33. In speaking with CHAIRMAN CLARK of the House Judiciary Committee, they had agreed to each send three members to a Sub-committee along with Valencia Lane to resolve the conflicts, if possible. The chairman named SENATOR BISHOP, SENATOR HALLIGAN AND SENATOR JABS to the committee. SENATOR HALLIGAN asked for the sentiment of the committee on requiring that the surcharge from the DUI fines go to the Jaws of Life equipment only, even for communities that have already purchased them? In the past, the money had gone to DUI Task Forces. He did not see a need for them to mandate where the money should go, but if there was no opposition, he would not propose it. SENATOR HOLDEN said it was a good point. CHAIRMAN CRIPPEN said the House group might have a different opinion. He would rely on the decision of the committee, he said. He hoped for an early resolution from the Sub-committee.

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EXECUTIVE ACTION ON HB 65

Motion/Vote: SENATOR HOLDEN MOVED THAT HB 65 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY on an oral vote. SENATOR HOLDEN was assigned the bill to carry to the Senate floor.

EXECUTIVE ACTION ON HB 186 and HB 366

Discussion: SENATOR HALLIGAN said the only suggested amendments were on Page 7 of HB 366. He and Ms. Lane would work on amendments to provide a way for requestors of information to put that request in writing or appearing in person. He thought it could be written in the (iii) Section of Page 7. In HB 186, the sponsor had agreed to an amendment to the, "take out or substantiated by," language. It was agreed to work on these bills the following day.

EXECUTIVE ACTION ON HB 322

Motion: SENATOR HALLIGAN MOVED TO AMEND HB 322 ON PAGE 1, LINE 19, AS SHOWN IN (EXHIBIT 2 - #3).

Discussion: CHAIRMAN CRIPPEN asked what would constitute, "not in compliance with state liquor laws?" Valencia Lane said underage drinking would be considered on instance, or a false ID.

SENATOR GROSFIELD stated he disagreed with SENATOR DOHERTY on all points. On dealing with a pattern of abuse, the key word on page 4, line 27, is "or". This leaves the court with discretion to deal with verbal abuse and any other abuse. Section 10 makes the physicians accountable but it is not insurmountable. According to the Supreme Court, the legislature cannot do anything which makes the access to this right unduly burdensome.

SENATOR HOLDEN commented that according to the testimony, these girls are just not prepared to make a decision about abortion and that is why parental notification is so important.

SENATOR NELSON believed the judicial bypass to be unduly burdensome. It is supposed to be broad and somewhat confidential; however no teen is going to be sophisticated enough to know how to go about getting a judicial bypass. She supports the part that parents ought to be notified but for those in dysfunctional families we need to come up with something which is workable for them.

Vote: The motion CARRIED on oral vote with SENATORS BARTLETT, DOHERTY, HALLIGAN, and NELSON voting "NO".

EXECUTIVE ACTION ON HB 366

Discussion: SENATOR HALLIGAN presented an amendment, EXHIBIT 7. He stated this would make sure that anyone requesting background information from the Department of Family Services make that request in writing.

Motion: SENATOR HALLIGAN MOVED TO AMEND HB 366. The motion CARRIED on oral vote.

Motion/Vote: SENATOR HALLIGAN MOVED HB 366 BE CONCURRED IN AS AMENDED. The motion CARRIED on oral vote.

EXECUTIVE ACTION ON HB 186

Discussion: SENATOR HALLIGAN presented an amendment, EXHIBIT 8. The first amendment was agreed to at the committee hearing.

Ann Gilkey, Department of Family Services, stated the concern by the House was that there would be simply an anonymous referral which wasn't substantiated. They believed that substantiated by the department and by independent corroboration would lead to a double standard.

Motion/Vote: SENATOR HALLIGAN MOVED TO AMEND HB 186. The motion CARRIED on oral vote.

Discussion: SENATOR HALLIGAN commented the other amendment which was discussed at the hearing would be on page 9, line 30, the word "advocate" was struck. That was only because the advocacy program people did not want to be included but they want to make

sure that the bills already passed which allow for lay people who are appointed guardian ad litem to be a part of this process. After "A guardian ad litem" insert "or a court appointed advocate". They do not want only attorneys to be involved.

Motion/Vote: SENATOR HALLIGAN MOVED TO AMEND HB 186. The motion CARRIED on oral vote with SENATORS BAER and ESTRADA voting "NO".

Motion/Vote: SENATOR HALLIGAN MOVED HB 186 BE CONCURRED IN AS AMENDED. The motion CARRIED on oral vote.

EXECUTIVE ACTION ON HJR 27

Motion: SENATOR BARTLETT MOVED TO AMEND HJR 27. (EXHIBIT 9)

Discussion: SENATOR BARTLETT explained that in the "BE IT RESOLVED" sections to strike the words "be congratulated for considering enhanced rescission legislation and". The concern is that the focus be on providing constitutional status to the item veto. The enhanced rescission authority in the first WHEREAS are apparently the buzz words which have become attached to the bill which the Congress is currently putting through to provide statutory authority for an item veto. That is very confusing.

CHAIRMAN CRIPPEN stated that enhanced rescission seems to apply only to appropriations bills whereas item veto would apply to any bill. The resolution is dealing with two subjects. One would be the item veto and the other enhanced rescission.

SENATOR BARTLETT stated that the information she received is that enhanced rescission is the language used in the federal statute to give statutory authority for an item veto. She finds that confusing and would like to see the focus where she believes it should be.

Vote: The motion FAILED on oral vote.

Discussion: Ms. Lane stated that the reason the language "enhanced rescission" is in this bill is because that is the language used in the federal legislation. Where the confusion arises is that the federal legislation, even though it is talked about in terms of granting the President line item veto authority, it is not the line item veto authority that we recognize in Montana which the Governor has. What the federal legislation does is allow the President to reduce a line item veto. That is where the rescission comes in. It allows him authority to reduce a line item veto but not to completely eliminate a line item or increase a line item but only reduce a line item.

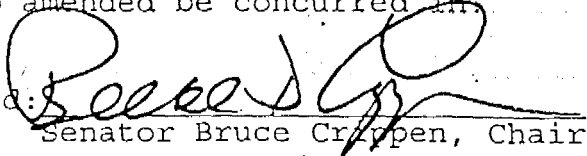
Motion/Vote: SENATOR HOLDEN MOVED HB 186 AS AMENDED BE TABLED.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 22, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 186 (third reading copy -- blue), respectfully report that HB 186 be amended as follows and as so amended be concurred in.

Signed: 

Senator Bruce Croppen, Chair

That such amendments read:

1. Page 9, line 30.

Following: "ad litem"

Insert: "or a court-appointed advocate"

2. Page 11, line 4.

Page 11, line 5.

Following: "DEPARTMENT"

Strike: "BY INDEPENDENT CORROBORATION"

3. Page 12, line 24.

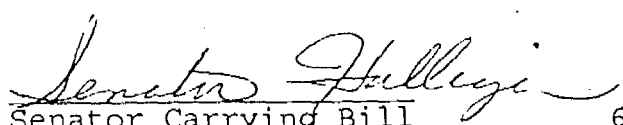
Following: "activities."

Insert: "A request for information under this subsection (o) must be made in writing."

-END-

 Amd. Coord.

Sec. of Senate


Senator Carrying Bill

661317SC.SRF

Passed

Amendments to House Bill No. 186
Third Reading Copy (blue)

Requested by Senator Halligan
For the Committee on Judiciary

Prepared by Valencia Lane
March 15, 1995

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 8

DATE 3/22/95

FILE NO. HB 186

1. Page 11, line 4.

Page 11, line 5.

Following: "DEPARTMENT"

Strike: "BY INDEPENDENT CORROBORATION"

2. Page 12, line 24.

Following: "activities."

Insert: "A request for information under this subsection (o) must
be made in writing."